

SINGLE BUSINESS TAX ACT

Act 228 of 1975

******* Act 228 of 1975 THIS ACT IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

AN ACT to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation.

History: 1975, Act 228, Eff. Jan. 1, 1976.

Compiler's note: Enacting section 3 of 1999 PA 115 provides:

"Enacting section 3. The single business tax act, 1975 PA 228, MCL 208.1 to 208.145, is repealed effective on the January 1 of the year in which the rate under section 31 is reduced to 0.0%, and is not effective for tax years that begin on or after that date."

The People of the State of Michigan enact:

CHAPTER 1

******* 208.1 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.1 Short title.

Sec. 1. This act shall be known and may be cited as the "single business tax act".

History: 1975, Act 228, Eff. Jan. 1, 1976.

Compiler's note: Enacting section 3 of 1999 PA 115 provides:

"Enacting section 3. The single business tax act, 1975 PA 228, MCL 208.1 to 208.145, is repealed effective on the January 1 of the year in which the rate under section 31 is reduced to 0.0%, and is not effective for tax years that begin on or after that date."

******* 208.2 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.2 Meanings of words, phrases, and terms; references to internal revenue code.

Sec. 2. (1) For the purposes of this act, the words and phrases defined in sections 3 to 10 shall have the meanings respectively ascribed to them in those sections.

(2) A term used in this act and not defined differently shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required. A reference in this act to the internal revenue code includes other provisions of the laws of the United States relating to federal income taxes.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.3 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT**

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BEGIN AFTER DECEMBER 31, 2009 *****

208.3 Definitions; A, B.

Sec. 3. (1) "Affiliated group" means 2 or more United States corporations, 1 of which owns or controls, directly or indirectly, 80% or more of the capital stock with voting rights of the other United States corporation or United States corporations. As used in this subsection, "United States corporation" means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

(2) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this act.

(3) "Business income" means federal taxable income, except that for a person other than a corporation it means that part of federal taxable income derived from business activity. For a partnership, business income includes payments and items of income and expense which are attributable to business activity of the partnership and separately reported to the partners.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

******* 208.4 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.4 Definitions; C, D.

Sec. 4. (1) "Casual transaction" means a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character, except that a transaction made or engaged in by a person that is incidental to that person's regular business activity is a business activity within the meaning of this act.

(2) "Commissioner" means the department.

(3) Except as otherwise provided in subsection (4), "compensation" means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to state and federal unemployment compensation funds, payments under the federal insurance contribution act and similar social insurance programs, payments, including self-insurance, for worker's compensation insurance, payments to individuals not currently working, payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals, payments to a pension, retirement, or profit sharing plan, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payments of fees for the administration of health and welfare and noninsured benefit plans. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers.

(b) Payments to an independent contractor.

(c) For tax years beginning after December 31, 1994, payments to state and federal unemployment compensation funds.

(d) For tax years beginning after December 31, 1994, the employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) For tax years beginning after December 31, 1994, payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to chapter 149, 35 Stat. 65, 45 USC

51 to 60.

(f) For tax years beginning after December 31, 2003, the following payments under health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state and payments of fees for the administration of health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state for the specified years:

- (i) For tax years that begin after December 31, 2003 and before January 1, 2005, 5%.
- (ii) For tax years that begin after December 31, 2004 and before January 1, 2006, 20%.
- (iii) For tax years that begin after December 31, 2005 and before January 1, 2007, 40%.
- (iv) For tax years that begin after December 31, 2006, the percentage of payments as provided under section 4a.

(4) For tax years that begin after December 31, 2003, for purposes of determining compensation of a professional employer organization, compensation includes payments by the professional employer organization to the officers and employees of an entity whose employment operations are managed by the professional employer organization. Compensation of the entity whose employment operations are managed by a professional employer organization does not include compensation paid by the professional employer organization to the officers and employees of the entity whose employment operations are managed by the professional employer organization. As used in this subsection, "professional employer organization" means an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

- (a) Maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity.
 - (b) Paying wages and employment taxes of the employees out of its own accounts.
 - (c) Reporting, collecting, and depositing state and federal employment taxes for the employees.
 - (d) Retaining the right to hire and fire employees.
- (5) "Department" means the department of treasury.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1982, Act 484, Imd. Eff. Dec. 30, 1982;—Am. 1995, Act 1, Imd. Eff. Mar. 8, 1995;—Am. 1995, Act 6, Imd. Eff. Mar. 8, 1995;—Am. 1995, Act 285, Imd. Eff. Jan. 9, 1996;—Am. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2002, Act 603, Imd. Eff. Dec. 20, 2002;—Am. 2003, Act 240, Imd. Eff. Dec. 29, 2003.

Compiler's note: Section 2 of Act 484 of 1982 provides: "This amendatory act shall take effect for tax years commencing after December 31, 1982."

******* 208.4a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.4a Compensation; payments not included.

Sec. 4a. For tax years that begin after December 31, 2006, compensation for purposes of section 4(3) does not include 50% of payments under health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state and payments of fees for the administration of health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state paid by the taxpayer in the tax year.

History: Add. 2003, Act 241, Imd. Eff. Dec. 29, 2003.

208.4b, 208.4c Repealed. 1995, Act 285, Imd. Eff. Jan. 9, 1996.

Compiler's note: The repealed sections pertained to payments not included as compensation.

******* 208.5 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.5 Definitions; E to I.

Sec. 5. (1) "Employee" means an employee as defined in section 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee.

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(2) “Employer” means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes shall prima facie be deemed an employer.

(3) “Federal taxable income” means taxable income as defined in section 63 of the internal revenue code.

(4) “Internal revenue code” means the United States internal revenue code of 1986 in effect on January 1, 1999 or, at the option of the taxpayer, in effect for the tax year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1982, Act 388, Imd. Eff. Dec. 28, 1982;—Am. 1987, Act 253, Imd. Eff. Dec. 28, 1987;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

******* 208.5a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.5a Definitions; I.

Sec. 5a. “Insurance company” means an authorized insurer as defined in section 106 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.106 of the Michigan Compiled Laws.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

******* 208.6 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.6 Definitions; P to R.

Sec. 6. (1) “Person” means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination acting as a unit.

(2) “Rent” includes a lease payment or other payment for the use of any property to which the taxpayer does not have legal or equitable title.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.7 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.7 Definitions; S; “gross receipts” defined.

Sec. 7. (1) As used in this act:

(a) “Sale” or “sales” means the amounts received by the taxpayer as consideration from the following:

(i) The transfer of title to, or possession of, property that is stock in trade or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(ii) The performance of services, which constitute business activities other than those included in subparagraph (i), or from any combination of business activities described in this subparagraph and subparagraph (i).

(iii) The rental, lease, licensing, or use of tangible or intangible property which constitutes business activity.

(b) “Sale” or “sales” does not include dividends, interest, and royalties received by the taxpayer to the extent deducted from the taxpayer's tax base under section 9(7) but does include royalties, fees, or other payments or consideration not deducted from tax base under section 9(7) except those royalties paid to a franchisor as consideration for the use outside of this state of trade names, trademarks, and similar intangible property.

(2) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country, or political subdivision of any of the foregoing.

(3) “Gross receipts” means the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to

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others except for the following:

(a) Proceeds from sales by a principal that the taxpayer collects in an agency capacity solely on behalf of the principal and delivers to the principal.

(b) Amounts received by the taxpayer as an agent solely on behalf of the principal that are expended by the taxpayer for any of the following:

(i) The performance of a service by a third party for the benefit of the principal that is required by law to be performed by a licensed person.

(ii) The performance of a service by a third party for the benefit of the principal that the taxpayer has not undertaken a contractual duty to perform.

(iii) Principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal.

(iv) A capital asset of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or for real property owned or leased by the principal.

(v) Property not described under subparagraph (iv) purchased by the taxpayer on behalf of the principal and that the taxpayer does not take title to or use in the course of performing its contractual business activities.

(vi) Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal.

(c) Amounts that are excluded from gross income of a foreign corporation engaged in the international operation of aircraft under section 883(a) of the internal revenue code.

(d) Amounts received by an advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person.

(e) Notwithstanding any other provision of this section, amounts received by a taxpayer that manages real property owned by the taxpayer's client that are deposited into a separate account kept in the name of the taxpayer's client and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that client.

(f) Proceeds from the taxpayer's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes. This subdivision does not apply to a taxpayer that during the tax year both buys and sells any receivables.

(g) Proceeds from any of the following:

(i) The original issue of stock or equity instruments.

(ii) The original issue of debt instruments.

(h) Refunds from returned merchandise.

(i) Cash and in-kind discounts.

(j) Trade discounts.

(k) Federal, state, or local tax refunds.

(l) Security deposits.

(m) Payment of the principal portion of loans.

(n) Value of property received in a like-kind exchange.

(o) Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income.

(p) The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1982, Act 376, Eff. Mar. 30, 1983;—Am. 2000, Act 477, Imd. Eff. Jan. 11, 2001;—Am. 2001, Act 229, Imd. Eff. Jan. 3, 2002;—Am. 2002, Act 606, Eff. Oct. 1, 2003.

Compiler's note: Section 2 of Act 376 of 1982 provides:

"Enacting section 2. This amendatory act shall take effect for tax years commencing after December 31, 1982."

Enacting section 1 of Act 477 of 2000 provides:

"Enacting section 1. This amendatory act takes effect for the tax years that begin after December 31, 2000."

Enacting section 2 of Act 229 of 2001 provides:

"Enacting section 2. This amendatory act takes effect for tax years that begin after December 31, 2000."

Enacting section 1 of 2002 PA 606 provides:

"This amendatory act takes effect for tax years that begin on or after October 1, 2003."

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***** 208.8 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.8 Definitions; T.

Sec. 8. "Tax" includes interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

History: 1975, Act 228, Eff. Jan. 1, 1976.

***** 208.9 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.9 "Tax base" defined.

Sec. 9. (1) "Tax base" means business income, before apportionment or allocation as provided in chapter 3, even if zero or negative, subject to the adjustments in this section.

(2) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(3) Add all taxes on or measured by net income and the tax imposed by this act to the extent the taxes were deducted in arriving at federal taxable income.

(4) Add the following, to the extent deducted in arriving at federal taxable income:

(a) A carryback or carryover of a net operating loss.

(b) A carryback or carryover of a capital loss.

(c) A deduction for depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets.

(d) A dividend paid or accrued except a dividend that represents a reduction of premiums to policyholders of insurance companies.

(e) A deduction or exclusion by a taxpayer due to a classification as, or the payment of commissions or other fees to, a domestic international sales corporation or any like special classification the purpose of which is to reduce or postpone the federal income tax liability. This subdivision does not apply to the special provisions of sections 805, 809, and 815(c)(2)(A) of the internal revenue code.

(f) All interest including amounts paid, credited, or reserved by insurance companies as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code. Interest does not include payments or credits made to or on behalf of a taxpayer by a manufacturer, distributor, or supplier of inventory to defray any part of the taxpayer's floor plan interest, if these payments are used by the taxpayer to reduce interest expense in determining federal taxable income. For purposes of this section, "floor plan interest" means interest paid that finances any part of the taxpayer's purchase of automobile inventory from a manufacturer, distributor, or supplier. However, amounts attributable to any invoiced items used to provide more favorable floor plan assistance to a taxpayer than to a person who is not a taxpayer is considered interest paid by a manufacturer, distributor, or supplier.

(g) All royalties except for the following:

(i) On and after July 1, 1985, oil and gas royalties that are excluded in the depletion deduction calculation under the internal revenue code.

(ii) Cable television franchise fees described in section 622 of part III of title VI of the communications act of 1934, 47 U.S.C. 542.

(iii) Except as provided in subparagraph (iv), for the tax years 1986 and after 1986, a franchise fee as defined by section 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in the following amounts:

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.

(B) For the tax years 1989 and 1990, 50% of the franchise fee.

(C) For the tax years 1991 and after 1991, 100% of the franchise fee.

(iv) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that, with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.

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(v) Film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

(vi) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(vii) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

(viii) For tax years that begin after December 31, 1993, royalties paid by a licensee of application computer software, operating system software, or system software pursuant to a license agreement. As used in this subparagraph and subsection (7)(c)(vii):

(A) "Application computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular business function, task, or result for the nontechnical end user. Application computer software includes any other computer software that does not qualify under sub-subparagraph (B) or (C).

(B) "Operating system software" means a set of statements or instructions that when incorporated into a machine or device having information processing capabilities is an interface between the computer hardware and the application computer software or system software.

(C) "System software" means a set of statements or instructions that interacts with operating system software that is developed, licensed, and intended for the exclusive use of data processing professionals to build, test, manage, or maintain application computer software for which a license agreement is signed by the licensor and licensee at the time of the transfer of the software and that is not transferred to the licensee as part of or in conjunction with a sale or lease of computer hardware.

(ix) For tax years that begin after December 31, 2000, royalties, fees, or other payments or consideration paid or incurred by a franchisee to a franchisor to establish or maintain the franchise relationship other than payments for the sale or lease of inventory, equipment, fixtures, or real property at fair rental or fair market value.

(h) A deduction for rent attributable to a lease back that continues in effect under the former provisions of section 168(f)(8) of the internal revenue code of 1954 as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986.

(5) Add compensation.

(6) Add a capital gain related to business activity of individuals to the extent excluded in arriving at federal taxable income.

(7) Deduct the following, to the extent included in arriving at federal taxable income:

(a) A dividend received or considered received, including the foreign dividend gross-up provided for in the internal revenue code.

(b) All interest except amounts paid, credited, or reserved by an insurance company as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code.

(c) All royalties except for the following:

(i) On and after July 1, 1985, oil and gas royalties that are included in the depletion deduction calculation under the internal revenue code.

(ii) Except as provided in subparagraph (iii), for the 1986 tax year and after the 1986 tax year, a franchise fee as defined in section 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in the following amounts:

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.

(B) For the tax years 1989 and 1990, 50% of the franchise fee.

(C) For the tax years 1991 and after 1991, 100% of the franchise fee.

(iii) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that, with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.

(iv) Film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

(v) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(vi) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

(vii) For tax years that begin after December 31, 1997, royalties received by a licensor, distributor, developer, marketer, or copyright holder of application computer software or operating system software pursuant to a license

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agreement. System software is not included within the exception under this subparagraph.

(viii) For tax years that begin after December 31, 2000, royalties, fees, or other payments or consideration paid or incurred by a franchisee to a franchisor to establish or maintain the franchise relationship other than payments for the sale or lease of inventory, equipment, fixtures, or real property at fair rental or fair market value.

(d) Rent attributable to a lease back that continues in effect under the former provisions of section 168(f)(8) of the internal revenue code of 1954 as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986.

(8) Deduct a capital loss not deducted in arriving at federal taxable income in the year the loss occurred.

(9) To the extent included in federal taxable income, add the loss or subtract the gain from the tax base that is attributable to another entity whose business activities are taxable under this act or would be taxable under this act if the business activities were in this state.

(10) For tax years that begin after December 31, 2004, deduct, to the extent included in federal taxable income, income received from either of the following:

(a) Small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) Grants from the Michigan technology tri-corridor SBIR emerging business fund administered by the Michigan economic development corporation.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1982, Act 406, Imd. Eff. Dec. 28, 1982;—Am. 1985, Act 27, Imd. Eff. June 5, 1985;—Am. 1985, Act 80, Imd. Eff. July 5, 1985;—Am. 1989, Act 294, Imd. Eff. Jan. 3, 1990;—Am. 1991, Act 169, Imd. Eff. Dec. 19, 1991;—Am. 1993, Act 105, Imd. Eff. July 15, 1993;—Am. 1996, Act 347, Eff. July 15, 1993;—Am. 1998, Act 539, Imd. Eff. Jan. 20, 1999;—Am. 2001, Act 230, Imd. Eff. Jan. 3, 2002;—Am. 2004, Act 258, Imd. Eff. July 23, 2004.

Compiler's note: Section 2 of Act 406 of 1982 provides: "This amendatory act shall take effect for tax years commencing after December 31, 1982."

Section 2 of Act 27 of 1985 provides: "This amendatory act shall apply for tax years commencing on or after January 1, 1985."

Section 2 of Act 347 of 1996 provides:

"This amendatory act is retroactive and effective on July 15, 1993."

******* 208.10 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.10 Definitions; T, U; "financial organization" defined.

Sec. 10. (1) "Tax year" or "taxable year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base is computed under this act. When a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year shall be for the same period as is covered by his federal income tax return.

(2) "Taxpayer" means a person liable for a tax, interest or penalty under this act.

(3) "Unrelated business activity" means any business activity that gives rise to unrelated taxable income as defined in the internal revenue code.

(4) "Financial organization" means a bank, industrial bank, trust company, building and loan or savings and loan association, bank holding company as defined in 12 U.S.C. 1841, credit union, safety and collateral deposit company, regulated investment company as defined in the internal revenue code, and any other association, joint stock company, or corporation at least 90% of whose assets consist of intangible personal property and at least 90% of whose gross receipts income consists of dividends or interest or other charges resulting from the use of money or credit.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976.

******* 208.19 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.19 Tax base of foreign person.

Sec. 19. (1) Except as otherwise provided in this section, for tax years that begin on or after January 1, 2000, except for a taxpayer that calculates tax base under section 22a, the tax base of a foreign person includes the sum of business income and the adjustments under section 9 that are related to United States business activity, whether or not the foreign person is subject to taxation under the internal revenue code.

(2) A foreign person shall calculate business income under this section.

(3) A foreign person shall calculate compensation by reporting total compensation paid to employees, officers, and directors of the foreign person for services performed in the United States.

(4) Except as otherwise provided in this section, the tax base of a foreign person is subject to all adjustments and other provisions of this act.

(5) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both inside and outside the United States, based on cost of performance.

(b) "Compensation" means, for a foreign person, the daily compensation paid to each employee, officer, and director of the foreign person multiplied by the number of days that the employee, officer, or director has physical contact with the United States in the tax year. Physical contact with the United States for part of a day equals 1 day.

(c) "Permanent establishment" means that term as defined in section 35b(3)(a).

(d) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(6) For tax years that begin after December 31, 1999 and before January 1, 2001, that portion of the tax base that is attributable to the international operation of aircraft by a foreign corporation whose gross income is exempt under section 883(a) of the internal revenue code is exempt from the tax imposed under this act.

(7) As used in this section and sections 46, 49, and 51, "foreign person" means either of the following:

(a) An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.

(b) A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

(8) To calculate business income and the adjustments under section 9 that are related to United States business activity, a foreign person that does not have a permanent establishment in the United States during the tax year or who is not subject to taxation under the internal revenue code for the tax year may use amounts that reasonably approximate the federal taxable income and the permitted deductions the person would have had had the person been subject to the internal revenue code, provided the foreign person does not in the ordinary course of its business maintain tax or financial accounting records in accordance with the tax accounting requirements of the internal revenue code. The tax base of a foreign person described in this subsection shall not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

(9) To calculate business income and the adjustments under section 9 that are related to United States business activity, a Canadian person that is subject to Canadian federal income tax under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) may use amounts properly calculated under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) to reasonably approximate business income and the adjustments under section 9 that are related to United States business activity. Amounts calculated under this subsection shall be presumed to reasonably approximate business income and the adjustments under section 9 that are related to United States business activity. The tax base of a Canadian person shall not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

(10) As used in subsection (9), "Canadian person" means a foreign person that does not have a permanent establishment in the United States during the tax year or that is not subject to taxation under the internal revenue code for the tax year and is either of the following:

(a) An entity formed under the laws of Canada or a province of Canada.

(b) An individual who is physically present in Canada in the aggregate exceeding 182 days in the tax year.

History: Add. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2001, Act 278, Imd. Eff. Jan. 11, 2002;—Am. 2002, Act 442, Imd. Eff. June 14, 2002.

Compiler's note: Enacting section 1 of Act 442 of 2002 provides:

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“Enacting section 1. This amendatory act is retroactive and is effective for tax years that begin after December 31, 1999.”

******* 208.20 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.20 Tax base of certain nonprofit persons.

Sec. 20. The tax base of nonprofit persons not required to pay federal income taxes shall be the sum of the net additions specified in sections 9 and 23 less the deductions specified in those sections.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.21 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.21 Tax base of financial organizations.

Sec. 21. (1) Except as otherwise provided in this act, the tax base of a financial organization is business income subject to the adjustments provided in section 9, with the exception of section 9(4)(f) and (7)(b), plus the following adjustments:

(a) Deduct, to the extent included in federal taxable income, interest income derived from obligations of the United States which this state is by federal law prohibited from subjecting to taxation, other than nondiscriminatory franchise or nonproperty taxes.

(b) For tax years ending after 1984, add expenses deducted from federal taxable income, to the extent not included in the tax base under this act, multiplied by a fraction, the numerator of which is the sum of interest income deducted under subdivision (a) plus interest from Michigan obligations and the denominator of which is total interest income. For tax years ending in 1985, in addition, add expenses deducted from federal taxable income in tax year 1984, to the extent not included in the tax base under this act, multiplied by a fraction, the numerator of which is the sum of interest income deducted in tax year 1984 under subdivision (a) plus interest income from Michigan obligations in tax year 1984 and the denominator of which is total interest income in tax year 1984. For tax years after 1984, the amount of an addition under this subdivision shall not exceed the amount of a deduction under subdivision (a), except for tax years ending in 1985 in which the addition shall not exceed the amount deducted under subdivision (a) in tax year 1984 plus the amount deducted under subdivision (a) in tax year 1985.

(2) In calculating its tax base, a financial organization that is defined or treated as a regulated investment company under the internal revenue code is not subject to the adjustments provided in section 9(2), (4)(d), and (7)(a).

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1984, Act 360, Eff. Mar. 29, 1985;—Am. 1990, Act 65, Imd. Eff. Apr. 24, 1990.

******* 208.21a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.21a Carryback of net operating loss or capital loss for federal income tax purposes; recomputation of allowable addition to reserve for bad debts; change to tax base; amended return; assessment of penalties, interest, or outstanding liability prohibited; statute of limitations not suspended.

Sec. 21a. (1) If a financial organization, to which section 593 of the internal revenue code applies, carries back a net operating loss or capital loss for federal income tax purposes, if federal income tax law requires the financial organization to recompute, solely because of the loss carryback, its allowable addition to its reserve for bad debts under section 593(b)(2) of the internal revenue code for 1 or more prior tax years, and if the recomputation would result, but for the application of this section, in an addition to the tax base for the tax year or years affected by the carryback, then both of the following apply:

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(a) For a tax year prior to the year of the loss, there shall be no change to the tax base because of the federal loss carryback or the federal reduction in the reserve for bad debts.

(b) For a tax year beginning after 1978 in which a loss is incurred, the financial organization shall add to its tax base the amount of the loss but not more than the sum of the following:

(i) Fifty percent of the federal income tax reductions to the reserves for bad debts for all tax years beginning before 1976 resulting solely because of the loss carryback.

(ii) One hundred percent of the federal income tax reductions to the reserves for bad debts for all tax years beginning after 1975 resulting solely because of the loss carryback.

(2) If a taxpayer is required to file an amended return under this section and the amended return is filed before June 15, 1990, the department shall not assess penalties or interest against the taxpayer for taxes due on that amended return as a result of the operation of this section. If a taxpayer complies with this section, the department shall not assess an outstanding liability under the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being sections 206.1 to 206.532 of the Michigan Compiled Laws, that results solely from the adjustments in the taxpayer's bad debt reserve.

(3) This section does not suspend the running of the statute of limitations for a tax year beginning before 1979 for any purpose other than for purposes of complying with this section.

History: Add. 1990, Act 36, Imd. Eff. Mar. 22, 1990.

Compiler's note: Section 2 of Act 36 of 1990 provides: "This amendatory act shall apply to tax years beginning after 1978."

******* 208.22 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.22 Tax base of insurance company not subject to premium tax under §§ 500.440 to 500.446.

Sec. 22. Before August 3, 1987, the tax base of an insurance company not subject to the provisions of the premiums tax under sections 440 to 446 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, as amended, being sections 500.440 to 500.446 of the Michigan Compiled Laws, shall be the sum of the business income and the adjustments provided in section 9. The tax calculated thereon shall be in lieu of all other privilege or franchise fees or taxes imposed by another law of the state, except taxes on real and personal property.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

******* 208.22a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.22a Tax base and adjusted tax base of insurance company; definitions.

Sec. 22a. (1) Except as otherwise provided, from August 3, 1987 to September 30, 1987, for the tax year beginning October 1, 1987 and ending September 30, 1988, and each tax year thereafter, the tax base and adjusted tax base of an insurance company is the product of .25 times the insurance company's adjusted receipts as apportioned under section 62.

(2) The tax base and adjusted tax base calculated under this section shall not be adjusted under sections 23 and 23b.

(3) The tax calculated under this section is in lieu of all other privilege or franchise fees or taxes imposed by any other law of this state, except taxes on real and personal property and except as otherwise provided in this act and in Act No. 218 of the Public Acts of 1956.

(4) As used in this section:

(a) "Adjusted receipts" means, except as provided in subdivision (b), the sum of all of the following:

(i) Rental and royalty receipts from a person that is not either of the following:

(A) An affiliated insurance company.

(B) An insurance agent of the taxpayer licensed under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.1200 to 500.1244 of the Michigan Compiled Laws.

(ii) Gross direct premiums received for insurance on property or risk, deducting premiums on policies not taken and returned premiums on canceled policies.

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(iii) Receipts from administrative services only contracts with a person who is not an affiliated insurance company or an affiliated nonprofit corporation.

(iv) Receipts from business activity other than the business of insurance. As used in this subparagraph, "business of insurance" means any activity related to the sale of insurance, payment of claims, or claims handling, on policies written by the taxpayer.

(v) Charges not including interest charges attributable to premiums paid on a deferred or installment basis.

(vi) Receipts from servicing carrier fees received from the Michigan auto insurance placement facility.

(b) Adjusted receipts do not include any of the following:

(i) Receipts from interest, dividends, or proceeds from the sale of assets.

(ii) Receipts, other than receipts described in subsection (4)(a)(i) or (ii), from an affiliated insurance company, an affiliated nonprofit corporation, an employee of the taxpayer, or an insurance agent of the taxpayer licensed under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.1200 to 500.1244 of the Michigan Compiled Laws.

(iii) Receipts on the sale of annuities.

(iv) Receipts on all reinsurance transactions.

(c) "Affiliated insurance company" means an insurance company that is a member of an affiliated group with the taxpayer or if the insurance company does not issue stock, 50% or more of the members of that insurance company's board of directors are members of the taxpayer's board of directors.

(d) "Affiliated nonprofit corporation" means a nonprofit corporation, of which 80% or more of the members of the board of directors are members of the taxpayer's board of directors.

(5) A refund for taxes paid for tax years before the 1996 tax year shall not be paid under this section if the refund claim is made after June 30, 1997 and is based on this section as it exists on the effective date of the amendatory act that added this subsection.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1995, Act 77, Eff. Aug. 3, 1987;—Am. 1996, Act 578, Eff. Jan. 1, 1991.

Compiler's note: Section 2 of Act 77 of 1995 provides:

"Section 22a of Act No. 228 of the Public Acts of 1975, being section 208.22a of the Michigan Compiled Laws, as amended by this amendatory act, is retroactive and effective beginning August 3, 1987."

Section 2 of Act 578 of 1996 provides:

"Section 2. Section 22a of Act No. 228 of the Public Acts of 1975, as amended by this amendatory act, is retroactive and effective January 1, 1991."

******* 208.22b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.22b Surcharge.

Sec. 22b. From August 3, 1987 to September 30, 1987, an insurance company shall pay a surcharge that is the product of .7 times the insurance company's tax liability under sections 22a and 31 before applying any credit allowed under this act. For the tax year beginning October 1, 1987 and ending September 30, 1988 and each tax year thereafter, an insurance company shall pay a surcharge that is the product of 1.26 times the insurance company's tax liability under sections 22a and 31 before applying any credit allowed under this act.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

******* 208.22c THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.22c Credit against tax and surcharge; limitations; use of tax liability and assessments from preceding year; certification of amounts needed to calculate credits.

Sec. 22c. (1) For the tax year beginning October 1, 1987 and ending September 30, 1988 and each tax year thereafter, an insurance company may claim a credit against the tax and surcharge imposed by this act in the following amounts, but not to exceed the limitations provided in this section:

(a) Amounts paid to the Michigan worker's compensation placement facility pursuant to chapter 23 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2301 to 500.2352 of the

Michigan Compiled Laws.

(b) Amounts paid to the Michigan basic property insurance association pursuant to chapter 29 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2901 to 500.2954 of the Michigan Compiled Laws.

(c) Amounts paid to the Michigan automobile insurance placement facility pursuant to chapter 33 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3301 to 500.3390 of the Michigan Compiled Laws.

(d) Amounts paid to the property and casualty guaranty association pursuant to chapter 79 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.7901 to 500.7949 of the Michigan Compiled Laws.

(e) Amounts paid to the Michigan life and health guaranty association pursuant to chapter 77 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.7701 to 500.7780 of the Michigan Compiled Laws.

(2) For the tax year beginning October 1, 1987 and ending September 30, 1988, the credit provided in subsection (1) shall not exceed 56% of the insurance company's tax liability under this act before applying the surcharge and credits.

(3) Except as otherwise provided in subsections (5) and (6), for the tax year beginning October 1, 1988 and ending September 30, 1989 and each tax year thereafter, the total credit provided in subsection (1) for all insurance companies shall not exceed the product of the remainder obtained by deducting the sum of \$30,000,000.00 plus the credits allowed under section 22e from the total tax liability of domestic insurance companies under this act including the surcharge but before applying any credits multiplied by a fraction the numerator of which is the total assessments paid by all insurance companies to the associations and facilities described in subsection (1) and the denominator of which is the total assessments paid by domestic insurance companies to the associations and facilities described in subsection (1). The \$30,000,000.00 subtrahend shall be adjusted annually in proportion to the change in total general fund/general purpose revenues for the immediately preceding year, as certified by the director of management and budget.

(4) For the tax year beginning October 1, 1988 and ending September 30, 1989 and each tax year thereafter, the credit for each insurance company shall not exceed an amount equal to the product of the total credit limitation calculated under subsection (3) multiplied by a fraction the numerator of which is the insurance company's total assessments paid to the associations and facilities described in subsection (1) and the denominator of which is the total assessments paid by all insurance companies to the associations and facilities described in subsection (1).

(5) For the tax year beginning October 1, 1988 and ending September 30, 1989, the credit provided in subsection (1) shall be 40.366% of the total assessments paid by the insurance company to the facilities and associations described in subsection (1).

(6) The tax liability and assessments of insurance companies from the immediately preceding tax year shall be used in calculating the credits allowed under this section for each tax year, except for the following:

(a) In calculating the total authorized credits for the 1991 tax year, assessments of insurance companies for calendar year 1990 shall be used and the total credit limitation calculated under subsection (3) shall be multiplied by 1.25.

(b) In calculating the total authorized credits for the 1992 tax year, assessments of insurance companies for calendar year 1991 shall be used and the total tax liability of domestic insurance companies for tax year 1991 shall be multiplied by 0.8.

(c) For tax years that begin after December 31, 1992 and before January 1, 1996, an affiliated group, 1 or more of the members of which have no employees and acquire goods or services from other affiliated group members, may allocate the amounts paid under subsection (1)(e) and used to determine the credit under this section for each tax year among the members of the affiliated group.

(7) Not later than June 30 of each year after 1990, the state treasurer shall certify the amounts needed to calculate the credits allowed under this section for the insurance company tax year ending in that calendar year.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1990, Act 255, Imd. Eff. Oct. 15, 1990;—Am. 1995, Act 256, Imd. Eff. Jan. 5, 1996.

Compiler's note: Section 2 of Act 255 of 1990 provides: "This act is curative and intended to validate the state treasurer's calculation of credit amounts for the 1989 tax year. Provisions of this act relating to the 1989 tax year credits are intended not to be severable from provisions of this act relating to calculation of the 1990 tax year credits."

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***** 208.22d THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.22d Insurance policyholder protection fund; creation; appropriations or transfers; deposits; disbursements.

Sec. 22d. (1) There is created within the department of treasury an insurance policyholder protection fund. Amounts deposited in the insurance policyholder protection fund shall not be appropriated or transferred except as provided by this section.

(2) For the tax year beginning October 1, 1987 and ending September 30, 1988, an amount equal to the revenue collected from insurance companies pursuant to this act and section 476a of the insurance code of 1956, and from the accident fund pursuant to section 476c of the insurance code of 1956, for that tax year that are in excess of \$195,000,000.00 shall be deposited in the insurance policyholder protection fund.

(3) For the tax year beginning October 1, 1988 and ending September 30, 1989, an amount equal to the revenue collected from insurance companies pursuant to this act and section 476a of the insurance code of 1956, and from the accident fund pursuant to section 476c of the insurance code of 1956, for that tax year that are in excess of \$193,000,000.00 shall be deposited in the insurance policyholder protection fund.

(4) Amounts deposited in the fund shall be disbursed annually from the fund pursuant to the following order of priority:

(a) To the life and health guaranty association under chapter 77 of the insurance code of 1956 and the property and casualty guaranty association under chapter 79 of the insurance code of 1956, to be used solely for the reduction of assessments to members for that year, in proportion to the assessments levied by the associations.

(b) If assessments to members of the life and health guaranty association and the property and casualty association are eliminated pursuant to subdivision (a), any excess shall be transferred to the Michigan basic property insurance association under chapter 29 of the insurance code of 1956, the automobile insurance placement facility under chapter 33 of the insurance code of 1956, and the Michigan worker's compensation placement facility under chapter 23 of the insurance code of 1956, to be used solely for the reduction of assessments to members for that year in proportion to the premium volume of the association and facilities for each rating plan or line of insurance.

(c) If assessments to member insurers are eliminated pursuant to subdivision (b), any excess shall be credited to the general fund.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

***** 208.22e THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.22e Credit against tax and surcharge.

Sec. 22e. For the tax year beginning October 1, 1987 and ending September 30, 1988 and each tax year thereafter, an insurance company shall be allowed a credit against the tax and surcharge imposed by this act in an amount equal to 50% of the examination fees paid by the insurance company during the tax year pursuant to section 224 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.224 of the Michigan Compiled Laws.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

***** 208.22f THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.22f Tax to which insurance company subject; payment; tax year; determination of liability; basis of prorating; schedule of estimated payments; filing annual return; automatic extension not available; calculating estimated payment; disclosure.

Sec. 22f. (1) Beginning August 3, 1987, an insurance company shall be subject to the tax as provided in this act

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or section 476a of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.476a of the Michigan Compiled Laws, if applicable, whichever is greater.

(2) For a tax year beginning before 1990, an insurance company shall pay the taxes required by this act on a tax year that begins on October 1 and ends on September 30 of the following year. The 1991 tax year for an insurance company begins October 1, 1990, and ends on December 31, 1991. For a tax year beginning after 1991, the insurance company tax year is the calendar year. The liability of a domestic insurer for the period before August 3, 1987 shall be determined on a calendar year basis and prorated based on the portion of the tax year before August 3, 1987. The commissioner shall determine a schedule of estimated payments for the 1991 insurance company tax year.

(3) Notwithstanding section 73, an insurance company shall file the annual return required under this act before March 2 after the end of the tax year, and an automatic extension under section 73(3) is not available.

(4) For the purpose of calculating an estimated payment required by section 71 for a tax year ending after 1989, the greater of the amount of tax imposed on an insurance company under this act or under section 476a of Act No. 218 of the Public Acts of 1956, shall be considered the insurance company's tax liability for the immediately preceding tax year.

(5) The requirements of section 28(1)(f) of Act No. 122 of the Public Acts of 1941, being section 205.28 of the Michigan Compiled Laws, that prohibit an employee or authorized representative of, a former employee or authorized representative of, or anyone connected with the department of treasury from divulging any facts or information obtained in connection with the administration of a tax, do not apply to disclosure of a tax return required by this section.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1990, Act 255, Imd. Eff. Oct. 15, 1990.

Compiler's note: Section 2 of Act 255 of 1990 provides: "This act is curative and intended to validate the state treasurer's calculation of credit amounts for the 1989 tax year. Provisions of this act relating to the 1989 tax year credits are intended not to be severable from provisions of this act relating to calculation of the 1990 tax year credits."

******* 208.23 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.23 Adjustment of tax base.

Sec. 23. After allocation as provided in section 40 or apportionment as provided in section 41, the tax base shall be adjusted by the following:

(a) For a tax year ending before March 31, 1991 for which subdivision (c) is not in effect, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes excluding costs of assets that are defined in section 1250 of the internal revenue code. However, for tangible assets that are subject to a lease back agreement under the former provisions of section 168(f)(8) of the internal revenue code as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986, the deduction shall be allowed only to the lessee or sublessee under the 168(f)(8) agreement. This deduction shall be multiplied by a fraction, the numerator of which is the payroll factor plus the property factor and the denominator of which is 2.

(b) For a tax year ending before March 31, 1991 for which subdivision (c) is not in effect, deduct the cost including fabrication and installation, excluding the cost deducted under subdivision (a) paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in Michigan.

(c) For a tax year beginning after September 30, 1989 but before January 1, 1997 and for tax years beginning after December 31, 1996 and before January 1, 2000 as provided in subdivision (h), deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This deduction shall be multiplied by the apportionment factor for the taxable year as defined in chapter 3. This subdivision does not apply to a taxpayer's first tax year ending after September 29, 1991.

(d) For a taxpayer's first tax year ending after September 29, 1991, the adjustment provided by this section shall

be calculated by computing the sum of the product of the cost, including fabrication and installation, paid or accrued in the immediately preceding tax year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes multiplied by the apportionment factor as defined in chapter 3 for that immediately preceding tax year, plus the product of the cost, including fabrication and installation, paid or accrued in the taxpayer's first tax year ending after September 29, 1991 of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes multiplied by the apportionment factor as defined in chapter 3 for that tax year, and reducing that sum by the adjustment for the cost, including fabrication and installation, paid or accrued in the immediately preceding tax year of tangible assets of a type that were, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes claimed by the taxpayer or allowed to the taxpayer under this act in the immediately preceding tax year. If the adjustment calculated pursuant to this subdivision is a positive amount, it shall be deducted from the tax base after allocation or apportionment, and if the adjustment calculated pursuant to this subdivision is a negative amount, it shall, without reference to the negative sign, be added to the tax base after allocation and apportionment. If any portion of this subdivision is determined to be invalid pursuant to a final appellate court decision, this subdivision shall be severed from this section.

(e) Except as provided in subdivisions (g),(h), and (i), for a tax year beginning after December 31, 1996 and before January 1, 2000, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) Except as provided in subdivision (h) and if subdivision (e) is in effect, for a tax year beginning after December 31, 1996 and before January 1, 2000, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3. As used in this section and section 23b, "mobile tangible assets" means all of the following:

(i) Motor vehicles that have a gross vehicle weight rating of 10,000 pounds or more and are used to transport persons for compensation or property.

(ii) Rolling stock, aircraft, and watercraft used by the owner to transport persons or property for compensation or used by the owner to transport the owner's property for sale, rental, or further processing.

(iii) Equipment used directly in completion of or in construction contracts for the construction, alteration, repair, or improvement of property.

(g) Except as provided in subdivision (h) and if subdivision (e) is in effect, for tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 1996 and before January 1, 2000 and physically located in this state after the assets are purchased or acquired for use in a business activity, deduct the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(h) For tax years beginning after December 31, 1996 and before January 1, 2000 and if subdivision (e) is in effect, subdivisions (e), (f), and (g) do not apply and subdivision (c) does apply to a taxpayer that meets all of the following criteria:

(i) The taxpayer has its headquarters in this state.

(ii) The taxpayer's date of incorporation, as filed with the corporate division of the corporation, securities, and land development bureau of the department of consumer and industry services, is on or before January 9, 1996.

(iii) The taxpayer's sales at retail of prescriptions are more than 2% and less than 10% of the taxpayer's total sales at retail.

(iv) The taxpayer sells at retail all of the following and, for tax years that begin before January 1, 1998, more than 50% or, for tax years that begin on and after January 1, 1998, more than 20% of the taxpayer's total sales is comprised of the retail sales of the following:

(A) Fresh, frozen, or processed food, food products, or consumable necessities.

(B) Household products.

- (C) Prescriptions.
- (D) Health and beauty care products.
- (E) Cosmetics.
- (F) Pet products.
- (G) Carbonated beverages.
- (H) Beer, wine, or liquor.

(i) For a tax year beginning after December 31, 1996 and before January 1, 2000 if subdivision (e) is not in effect, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1991, Act 128, Imd. Eff. Oct. 25, 1991;—Am. 1995, Act 282, Imd. Eff. Jan. 9, 1996;—Am. 1998, Act 504, Imd. Eff. Jan. 5, 1999;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In *Trinova Corp. v Michigan Department of Treasury*, 111 S Ct 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

In *Caterpillar v Department of Treasury*, 440 Mich 400 (1992) plaintiffs brought an action in Court of Claims against the Department of Treasury, Revenue Division, seeking a refund of all single business taxes paid between 1981 and 1984. Plaintiffs claimed that the capital acquisition deduction permitted under the Single Business Tax Act burdens interstate commerce in violation of the Commerce Clause of the U.S. Constitution. The court held the capital acquisition tax to be unconstitutional and disallowed its application beginning September 30, 1989. The Court of Appeals affirmed the decision to grant prospective relief and ruled that the language of the deduction provision that produces a discriminatory effect should be removed. The Michigan Supreme Court reversed by holding that the capital acquisition deduction of the Single Business Tax Act does not violate the Commerce Clause of the United States Constitution. The Michigan Supreme Court determined that: (1) a nexus exists between the plaintiff Caterpillar Corporation and the state of Michigan; (2) the methods of apportionment are fair; (3) no facts were presented indicating substantial misappropriation or distorted results; (4) no evidence was introduced of discriminatory purpose or effect; and, (5) plaintiff received benefits fairly related to services provided by the state.

Compiler's note: In subsection (b), the clause "or under the internal revenue code will become ..." evidently should be followed by a comma to read "or under the internal revenue code will become, ..."

Section 2 of Act 208 of 1981 provides: "This amendatory act shall take effect for tax years beginning after December 31, 1980."

Section 2 of Act 77 of 1991 provides: "The provisions of section 23(c) of this amendatory act are curative and intended to correct any misinterpretation of legislative intent in the Michigan court of appeals decision in *Caterpillar v State of Michigan*, Department of Treasury, Docket No. 119584. The legislature finds that for persons whose tax base is apportioned under chapter 3 of the single business tax (SBT) act, an unapportioned capital acquisition deduction is inconsistent with the manifest intent of the legislature. This legislation further expresses the original intent of the legislature that for persons whose tax base is apportioned under chapter 3, the capital acquisition deduction shall be apportioned or allocated to Michigan."

******* 208.23a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.23a Decision declaring § 208.23(e) unconstitutional; effect.

Sec. 23a. For a year for which any portion of section 23(e) is declared unconstitutional in a decision rendered by an appellate court and if that decision is not under appeal, sections 23(e), (f), (g), and (h), 23b(e) and (f), and 36c are not effective.

History: Add. 1995, Act 282, Imd. Eff. Jan. 9, 1996.

******* 208.23b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.23b Adjustment of tax base.

Sec. 23b. After allocation as provided in section 40 or apportionment as provided in section 41, the tax base shall

be adjusted by the following:

(a) If the cost of an asset was paid or accrued in a tax year ending before March 31, 1991 for which a deduction under section 23(c) is not in effect, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(a) minus the gain and plus the loss from the sale reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by a fraction, the numerator of which is the payroll factor plus the property factor and the denominator of which is 2. As used in this subdivision, "sale or other disposition" does not include the transfer of tangible assets that are leased back to the transferor under the former provisions of section 168(f)(8) of the internal revenue code as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986.

(b) If the cost of an asset was paid or accrued in a tax year ending before March 31, 1991 for which a deduction under section 23(c) is not in effect, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(b) for a tax year beginning before January 1, 1991 minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor as prescribed in chapter 3, from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6).

(c) If the cost of an asset was paid or accrued in a tax year beginning after September 30, 1989 but before January 1, 1997 or paid or accrued in a tax year beginning after December 31, 1996 and before January 1, 2000 as provided in subdivision (f), add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(c) minus the gain and plus the loss from the sale reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed by chapter 3.

(d) Except as provided in subdivisions (f) and (g) and if the cost of tangible assets described in section 23(e), (f), or (g) was paid or accrued in a tax year beginning after December 31, 1996 and before January 1, 2000, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(e) Except as provided in subdivision (f) and if section 23(e) is in effect, for assets other than mobile tangible assets purchased or acquired in a tax year beginning after December 31, 1996 and before January 1, 2000 that were eligible for a deduction under section 23(e) or (g) and that were transferred out of this state, add the federal basis used for determining gain or loss as of the date of the transfer. This addition shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For tax years beginning after December 31, 1996 and if section 23(e) is in effect, subdivisions (d) and (e) do not apply and subdivision (c) does apply to a taxpayer that meets all of the following criteria:

- (i) The taxpayer has its headquarters in this state.
- (ii) The taxpayer's date of incorporation, as filed with the corporate division of the corporation, securities, and land development bureau of the department of consumer and industry services, is on or before January 9, 1996.
- (iii) The taxpayer's sales at retail of prescriptions are more than 2% and less than 10% of the taxpayer's total sales at retail.
- (iv) The taxpayer sells at retail all of the following and, for tax years that begin before January 1, 1998, more than 50% or, for tax years that begin on and after January 1, 1998, more than 20% of the taxpayer's total sales is comprised of the retail sales of the following:

- (A) Fresh, frozen, or processed food, food products, or consumable necessities.
- (B) Household products.
- (C) Prescriptions.
- (D) Health and beauty care products.
- (E) Cosmetics.
- (F) Pet products.
- (G) Carbonated beverages.
- (H) Beer, wine, or liquor.

(g) If section 23(e) is not in effect and if the cost of tangible assets described in section 23(i) was paid or accrued in a tax year beginning after December 31, 1996 and before January 1, 2000, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or

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other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(h) Deduct any available business loss. As used in this subdivision, "business loss" means a negative amount after allocation or apportionment as provided in chapter 3 and after adjustments as provided in section 23 and subdivisions (a) to (g) without regard to the deduction under this subdivision. The business loss shall be carried forward to the year next following the loss year as an offset to the allocated or apportioned tax base including the adjustments provided in subdivisions (a) to (g), then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year.

History: Add. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1995, Act 282, Imd. Eff. Jan. 9, 1996;—Am. 1998, Act 504, Imd. Eff. Jan. 5, 1999;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

CHAPTER 2

******* 208.31 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.31 Specific tax on adjusted tax base; rates; "adjusted tax base" defined; tax imposed on privilege of doing business; reduction of adjusted tax base in lieu of reduction; limitation; applicability of subsection (4); effect of comprehensive annual financial report; annualized rate.

Sec. 31. (1) Except as provided in subsections (5) and (6), there is levied and imposed a specific tax upon the adjusted tax base of every person with business activity in this state that is allocated or apportioned to this state at the following rates for the specified periods:

- (a) Before October 1, 1994, 2.35%.
- (b) After September 30, 1994 and before January 1, 1999, 2.30%.
- (c) Beginning January 1, 1999 and each January 1 after 1999, the rate under this subsection shall be reduced as provided in subsection (5).

(2) As used in this section, "adjusted tax base" means the tax base allocated or apportioned to this state pursuant to chapter 3 with the adjustments prescribed by sections 23 and 23b and the exemptions prescribed by section 35. If the adjusted tax base exceeds 50% of the sum of gross receipts plus the adjustments provided in section 23b(a) to (g), apportioned or allocated to Michigan with the apportionment fraction calculated pursuant to chapter 3, the adjusted tax base may, at the option of the taxpayer, be reduced by that excess. If a taxpayer reduces the adjusted tax base under this subsection, the taxpayer is not entitled to the adjustment provided in subsection (4) for the same taxable year. This subsection does not apply to an adjusted tax base under section 22a.

(3) The tax levied under this section and imposed is upon the privilege of doing business and not upon income.

(4) In lieu of the reduction provided in subsection (2), a person may elect to reduce the adjusted tax base by the percentage that the compensation divided by the tax base exceeds 63%. The deduction shall not exceed 37% of the adjusted tax base. For purposes of computing the deduction allowed by this subsection, as effective for the respective tax year, compensation does not include amounts of compensation exempt from tax under section 35(1)(e). This subsection does not apply to an adjusted tax base under section 22a.

(5) If the comprehensive annual financial report of this state for a state fiscal year, published pursuant to section 494 of the management and budget act, 1984 PA 431, MCL 18.1494, reports an ending balance of more than \$250,000,000.00 in the countercyclical budget and economic stabilization fund created under section 351 of the management and budget act, 1984 PA 431, MCL 18.1351, for that state fiscal year, the tax rate under this section shall be reduced by 0.1 percentage point on the January 1 following the end of the state fiscal year for which the report was issued.

(6) The department shall annualize the rate under this section as necessary, and the applicable annualized rate shall be imposed.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1982, Act 414, Imd. Eff. Dec. 28, 1982;—Am. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1993, Act 329, Eff. Apr. 1, 1994;—Am. 1994, Act 247, Eff. July 7, 1994;—Am.

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1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

Compiler's note: Section 2 of Act 414 of 1982 provides: "This amendatory act shall take effect for tax years commencing after December 31, 1982."

Section 3 of Act 208 of 1981 provides: "Deletions of the word 'total' made by this amendatory act in section 31 of the single business tax act, Act No. 281 of the Public Acts of 1975, as amended, being section 208.35 of the Michigan Compiled Laws, shall serve to cure and clarify any misinterpretation of the operation of section 31 since the effective date of Act No. 273 of the Public Acts of 1977. When originally enacted by Act No. 228 of the Public Acts of 1975, section 31 used the term 'total tax base' to indicate that the exclusions made by section 9(4)(c) of the single business tax act of a portion of the depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets should be added back to the tax base, before apportionment or allocation, for purposes of section 31. However when, by Act No. 273 of the Public Acts of 1977, section 9(4)(c) was amended to require that all depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets be included in a person's tax base, there became no difference between the 'tax base' and 'total tax base' of a person. The deletion of the word 'total' by this amendatory act is an expression of the Legislature's intent that the terms 'total tax base' and 'tax base' were, since the effective date of Act No. 273 of the Public Acts of 1977, to be considered synonymous and that its deletion by this amendatory act should be interpreted as a resolution of further misinterpretations."

Enacting section 3 of 1999 PA 115 provides:

"Enacting section 3. The single business tax act, 1975 PA 228, MCL 208.1 to 208.145, is repealed effective on the January 1 of the year in which the rate under section 31 is reduced to 0.0%, and is not effective for tax years that begin on or after that date."

******* 208.31a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.31a Tax credit for qualified start-up business; criteria; definitions.

Sec. 31a. (1) For tax years that begin after December 31, 2004, a taxpayer that meets the criteria under subsection (4) and that is a qualified start-up business that does not have business income for 2 consecutive tax years may claim a credit against the tax imposed under this act for the second of those 2 consecutive tax years and each immediately following consecutive tax year in which the taxpayer does not have business income equal to the taxpayer's tax liability for the tax year in which the taxpayer has no business income. If the taxpayer has business income in any tax year after the credit under this section is claimed, the taxpayer shall claim the credit under this section for any following tax year only if the taxpayer subsequently has no business income for 2 consecutive tax years. The taxpayer may claim the credit for the second of those 2 consecutive tax years and each immediately following consecutive tax year in which the taxpayer does not have business income. A credit under this section shall not be claimed for more than a total of 5 tax years.

(2) If a taxpayer that took the credit under this section has no business activity in this state and has any business activity outside of this state for any of the first 3 tax years after the last tax year for which it took the credit under this section, the taxpayer shall add to its tax liability the following amounts:

(a) If the taxpayer has no business activity in this state for the first tax year after the last tax year for which a credit under this section is claimed, 100% of the total of all credits claimed under this section.

(b) If the taxpayer has no business activity in this state for the second tax year after the last tax year for which a credit under this section is claimed, 67% of the total of all credits claimed under this section.

(c) If the taxpayer has no business activity for the third tax year after the last tax year for which a credit under this section is claimed, 33% of the total of all credits claimed under this section.

(3) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine number of employees, sales, and business income for purposes of this section on a consolidated basis.

(4) For the tax year for which a credit under this section is claimed, compensation, director's fees, or distributive shares paid by the taxpayer to any 1 of the following does not exceed \$135,000.00:

(a) A shareholder or officer of a corporation other than an S corporation.

(b) A partner of a partnership or limited liability partnership.

- (c) A shareholder of an S corporation.
- (d) A member of a limited liability corporation.
- (e) An individual who is an owner.
- (5) As used in this section:

(a) "Business income" means business income as defined in section 3 excluding funds received from small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) "Michigan economic development corporation" means the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, as amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund.

(c) "Qualified start-up business" means a business that meets all of the following criteria as certified annually by the Michigan economic development corporation:

- (i) Has fewer than 25 full-time equivalent employees.
- (ii) Has sales of less than \$1,000,000.00 in the tax year for which the credit under this section is claimed.
- (iii) Research and development make up at least 15% of its expenses in the tax year for which the credit under this section is claimed.
- (iv) Is not publicly traded.
- (v) Met 1 of the following criteria during 1 of the initial 2 consecutive tax years in which the qualified start-up business had no business income:

(A) During the immediately preceding 7 years was in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19.

(B) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had employees and was liable under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(C) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had not assumed successor liability under section 15(g) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

(d) "Research and development" means qualified research as that term is defined in section 41(d) of the internal revenue code.

History: Add. 2004, Act 126, Imd. Eff. May 28, 2004.

Compiler's note: Former § 208.31a, which pertained to annualized rate, was repealed by Act 115 of 1999, Imd. Eff. July 14, 1999.

******* 208.35 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.35 Exemptions.

Sec. 35. (1) The following are exempt from the tax imposed by this act:

(a) For tax years beginning after 1976 and before January 1, 1989, the first \$40,000.00; for tax years beginning in 1989, the first \$41,000.00; for tax years beginning in 1990, the first \$42,000.00; for tax years beginning in 1991, the first \$43,000.00; for tax years beginning in 1992, the first \$44,000.00; and for tax years beginning after 1992, the first \$45,000.00 of the tax base of every person. This exemption shall be increased by \$12,000.00 for each partner of a partnership or shareholder of a subchapter S corporation or professional corporation in excess of 1 who is a full-time employee of the taxpayer, whose business income from that business is at least \$12,000.00, and who owns at least 10% of that business. The total increase in the exemption shall be not more than \$48,000.00. For a taxpayer whose business activity is for a fractional part of a year, the exemption provided in this subdivision including the increase in the exemption shall be prorated for the period of the taxpayer's business activity. This exemption shall be reduced by \$2.00 for each \$1.00 that business income exceeds the amount of the exemption. For the purposes of

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computing the exemption, "business income" means that term as defined in section 3 plus compensation and director's fees of shareholders of a corporation and any carryback or carryover of a net operating loss or capital loss to the extent deducted in arriving at federal taxable income. In calculating eligibility for the exemption provided in this subdivision, a person who is not a corporation may elect to average its business income for the current year and the previous 4 taxable years. Business income as defined in this subdivision shall not be less than zero. For the purposes of this subdivision, tax base shall be after allocation and apportionment provided in chapter 3 and the adjustments provided in sections 23 and 23b. This subdivision does not apply to an adjusted tax base under section 22a.

(b) The United States, this state, other states, and the agencies, political subdivisions, and enterprises of each.

(c) A person who is exempt from federal income tax under the internal revenue code, and, for tax years that begin after December 31, 1995, a partnership, limited liability company, joint venture, general partnership, limited partnership, unincorporated association, or other group or combination of entities acting as a unit if the activities of the entity are exclusively related to the charitable, educational, or other purpose or function that is the basis for the exemption under the internal revenue code from federal income taxation of the partners or members and if all of the partners or members of the entity are exempt from federal income tax under the internal revenue code, except the following:

(i) An organization included under section 501(c)(12) or 501(c)(16) of the internal revenue code.

(ii) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code but for its failure to meet the requirements in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(iii) The adjusted tax base attributable to the activities giving rise to the unrelated taxable business income of an exempt person.

(d) Before August 3, 1987, a foreign or alien insurance company subject to the provisions of the premium tax under sections 440 to 446 of the insurance code of 1956, 1956 PA 218, as those sections were in effect on December 27, 1987. This exemption does not apply to the tax base derived from a business activity other than insurance carrier services.

(e) Before August 3, 1987, that portion of the payroll of a domestic insurer or of a marketing corporation that constitutes insurance sales commissions paid to employees and salaries of employees primarily concerned with the adjustment of claims. This exemption does not apply to a marketing corporation that is not controlled, directly or indirectly, by stock ownership or common management, by the domestic insurer or insurers from which it derives all or substantially all of its gross income, exclusive of income from investments.

(f) Beginning August 3, 1987 and after being apportioned under section 62, the first \$130,000,000.00 of disability insurance premiums written in Michigan, or, for the 1991 tax year only, the first \$162,500,000.00 of disability insurance premiums written in Michigan, other than credit insurance and disability income insurance premiums, of each insurer subject to tax under this act. This exemption shall be reduced by \$2.00 for each \$1.00 by which the insurer's gross premiums from insurance carrier services in this state and outside this state exceed \$180,000,000.00, or, for the 1991 tax year only, \$225,000,000.00.

(g) A nonprofit cooperative housing corporation. As used in this subdivision, "nonprofit cooperative housing corporation" means a cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest upon stock or membership investment but that does distribute all earnings to its stockholders or members. This exemption does not apply to a business activity of a nonprofit cooperative housing corporation other than providing housing services to its stockholders and members.

(h) That portion of the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. "Production of agricultural goods" means commercial farming including, but not limited to, cultivation of the soil; growing and harvesting of an agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; or turf or tree farming, but not including the marketing at retail of agricultural goods except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

(i) Except as provided in subsection (3), a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under subdivision (c) because the corporation was exempt from federal income taxes under section 521 of the internal revenue code and that would continue to be exempt under section 521 of the internal revenue code except for either of the following activities:

(i) The corporation's repurchase from nonproducer customers of portions or components of commodities the

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corporation markets to those nonproducer customers and the corporation's subsequent manufacturing or marketing of the repurchased portions or components of the commodities.

(ii) The corporation's incidental or emergency purchases of commodities from nonproducers to facilitate the manufacturing or marketing of commodities purchased from producers.

(j) That portion of the tax base attributable to the direct and indirect marketing activities of a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, if those marketing activities are provided on behalf of the members of that corporation and are related to the members' direct sales of their products to third parties, or, for livestock, are related to the members' direct or indirect sales of that product to third parties. Marketing activities for a product that is not livestock are not exempt under this subdivision if the farmers' cooperative corporation takes physical possession of the product. As used in this subdivision, "marketing activities" includes, but is not limited to, activities under the agricultural commodities marketing act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726; dissemination of market information; establishment of price and other terms of trade; promotion; and research relating to members' products.

(k) That portion of the tax base attributable to the services provided by an attorney-in-fact to a reciprocal insurer pursuant to chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200 to 500.7234.

(l) For tax years that begin after December 31, 2000, that portion of the tax base attributable to a multiple employer welfare arrangement that provides dental benefits only and that has a certificate of authority under chapter 70 of the insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

(2) An affiliated group, a controlled group of corporations as defined by section 1563 of the internal revenue code, or an entity under common control as defined by the internal revenue code is entitled to only 1 exemption allowed by subsection (1)(a) whether or not a combined or consolidated return is filed.

(3) Subsection (1)(i) does not exempt a farmers' cooperative corporation if the total dollar value of the corporation's incidental and emergency purchases described in subsection (1)(i)(ii) are equal to or greater than either of the following:

(a) For tax years that end before January 1, 1995, 5% of the total dollar value of the corporation's repurchases described in subsection (1)(i)(i).

(b) For tax years that end after December 31, 1994, 5% of the corporation's total purchases.

(4) For tax years that end after December 31, 1990 and except as otherwise provided in this section, a farmers' cooperative corporation shall exclude from adjusted tax base the revenue and expenses attributable to business transacted with farmer or farmer cooperative corporation patrons to whom net earnings are allocated in the form of patronage dividends as defined in section 1388 of the internal revenue code. In computing the adjusted tax base of a farmers' cooperative corporation, each of the additions and deductions under sections 9, 23, and 23b shall be multiplied by a fraction, the numerator of which is the gross profit of the nonpatronage sourced business of the farmers' cooperative corporation and the denominator of which is the gross profits of the farmers' cooperative corporation. As used in this subsection only, "farmers' cooperative corporation" means a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

(5) As used in subsection (1)(c), "exclusively" means that term as applied for purposes of section 501(c)(3) of the internal revenue code.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1988, Act 390, Imd. Eff. Dec. 21, 1988;—Am. 1989, Act 285, Imd. Eff. Dec. 26, 1989;—Am. 1992, Act 170, Imd. Eff. July 21, 1992;—Am. 1995, Act 255, Imd. Eff. Jan. 5, 1996;—Am. 1997, Act 124, Imd. Eff. Nov. 5, 1997;—Am. 1998, Act 240, Imd. Eff. July 3, 1998;—Am. 2000, Act 429, Imd. Eff. Jan. 9, 2001;—Am. 2001, Act 224, Imd. Eff. Jan. 2, 2002.

******* 208.35a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.35a Tax credit for year beginning after December 31, 1999.

Sec. 35a. (1) For a tax year beginning after December 31, 1999, a taxpayer may claim a credit against the tax imposed by this act of equal to the percentage determined under subsection (2) multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

(a) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets

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of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets.

(b) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 1996 and physically located in this state in a tax year beginning after December 31, 1999 and after the assets are purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6).

(e) If the cost of tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 1996 that were eligible for a deduction under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer.

(2) The amount calculated under subsection (1) shall be multiplied by a percentage determined by dividing the tax rate for the tax year in which the credit is claimed by 2.3% and multiplying that result by the following percentage as applicable:

(a) For taxpayers with adjusted gross receipts for the tax year of \$1,000,000.00 or less, 2.3%.

(b) For taxpayers with adjusted gross receipts for the tax year of more than \$1,000,000.00 but \$2,500,000.00 or less, 1.5%.

(c) For taxpayers with adjusted gross receipts for the tax year of more than \$2,500,000.00 but \$5,000,000.00 or less, 1.0%.

(d) For taxpayers with adjusted gross receipts for the tax year of more than \$5,000,000.00, 0.85%.

(3) For a tax year in which the amount calculated under subsection (1) and multiplied by the percentage determined under subsection (2) is negative, the absolute value of that amount is added to the taxpayer's tax liability for the tax year.

(4) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 9 taxable years or until the excess credit is used up, whichever occurs first.

(5) Notwithstanding any other provision of this act, the credit provided in this section shall be taken before any other credit under this act and the credits under other sections of this act shall be calculated using the tax liability after the calculation of the credit under this section and, to the extent provided by law, after the calculation of credits under other sections of this act.

(6) A taxpayer that reduces the adjusted tax base under section 31(2) shall not claim a credit under this section.

(7) A taxpayer that reduces the adjusted tax base under section 31(4) shall reduce the credit under this section by a percentage not to exceed 100% determined by dividing the applicable tax rate under section 31(1) by the percentage determined under subsection (2) and multiplying the result by the percentage reduction to the adjusted tax base claimed by the taxpayer for the tax year under section 31(4).

(8) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine adjusted gross receipts for purposes of subsection (2) on a consolidated basis.

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(9) A taxpayer that calculates its tax base under section 22a is not eligible for the credit allowed under this section.

(10) As used in subsection (2), "adjusted gross receipts" means the sum of the following:

(a) Gross receipts apportioned or allocated to Michigan with the apportionment fraction calculated pursuant to chapter 3.

(b) Adjustments provided in section 23b(a) to (g).

(c) Adjustments provided in subsection (1)(d) to (f).

History: Add. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2000, Act 44, Imd. Eff. Mar. 27, 2000;—Am. 2000, Act 429, Imd. Eff. Jan. 9, 2001.

******* 208.35b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.35b Calculation of compensation related to United States business activity by foreign transporter; election; definitions.

Sec. 35b. (1) Notwithstanding anything to the contrary in section 19, a foreign person that does not have a permanent establishment in the United States and whose business activity consists of the transportation of persons or property for others by motor vehicle may elect, for purposes of section 19, to calculate compensation related to United States business activity by 1 of the following methods:

(a) Calculate compensation under section 19 and reduce the final calculation by 50%.

(b) Calculate compensation by determining total compensation everywhere, apportioned to the United States by a formula, the numerator of which is revenue miles traveled in the United States and the denominator of which is revenue miles traveled everywhere.

(2) A person that calculates compensation related to United States business activity under subsection (1)(a) shall not claim a reduction under section 31(4).

(3) As used in this section:

(a) "Permanent establishment" means either of the following:

(i) If an income tax treaty applies to the foreign person, that term as defined in that income tax treaty in effect between the United States and another nation.

(ii) If no income tax treaty applies to the foreign person, that term as defined in the United States model income tax convention.

(b) "Foreign person" means that term as defined in section 19(6).

(c) "Revenue miles" means that term as defined in section 57.

History: Add. 2000, Act 373, Imd. Eff. Jan. 2, 2001.

******* 208.36 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.36 Definitions; credit against tax imposed by § 208.31; qualifications; credit as percentage reduction in tax liability; calculation of percentage reduction; limitation on credit; consolidating business activities of certain entities as prerequisite for credit; filing and paying tax without computing tax imposed under § 208.31.

Sec. 36. (1) As used in this section:

(a) "Active shareholder" means a shareholder who receives at least \$10,000.00 in compensation, director's fees, or dividends from the business, and who owns at least 5% of the outstanding stock.

(b) "Officer" means an officer of a corporation other than a subchapter S corporation including the chairperson of the board, president, vice-president, secretary, and treasurer, or persons performing similar duties.

(c) "Adjusted business income" means business income as defined in section 3 with all of the following adjustments:

(i) Add compensation and director's fees of active shareholders of a corporation.

(ii) Make the adjustments provided in section 9(4)(a) and (b).

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(iii) Add compensation and director's fees of officers of a corporation.

(d) "Shareholder" means a person who owns outstanding stock in the business. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

(e) "Loss adjustment" means the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit provided by this section is being determined. In determining the loss adjustment for a tax year, a taxpayer is not required to use more of the taxpayer's total negative adjusted business income than the amount needed to qualify the taxpayer for the credit under this section. A taxpayer shall not be considered to have used any portion of the taxpayer's negative adjusted business income amount unless the portion used is necessary to qualify for the credit under this section. A taxpayer shall not reuse a negative adjusted business income amount used as a loss adjustment in a previous tax year or use a negative adjusted business income amount from a year in which the taxpayer did not receive the credit under this section.

(f) "Subchapter S corporation" means a corporation electing taxation under subchapter S of chapter 1 of subtitle A of the internal revenue code, sections 1361 to 1379 of the internal revenue code.

(2) The credit provided in this section shall be taken before any other credit under this act, and is available to any person whose gross receipts do not exceed \$6,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for tax years commencing in 1990; \$7,500,000.00 for tax years commencing in 1991; or \$10,000,000.00 for tax years commencing after 1991, and whose adjusted business income minus the loss adjustment does not exceed \$475,000.00 for tax years commencing on or after January 1, 1985, subject to the following:

(a) An individual, a partnership, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives more than \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998 or more than \$115,000.00 for tax years commencing after December 31, 1997 as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, or the subchapter S corporation.

(b) A corporation other than a subchapter S corporation is disqualified if either of the following occur for the respective tax year:

(i) Compensation and director's fees of a shareholder or officer exceed \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998 or exceed \$115,000.00 for tax years commencing after December 31, 1997.

(ii) The sum of the following amounts exceeds \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998 or exceeds \$115,000.00 for tax years commencing after December 31, 1997:

(A) Compensation and director's fees of a shareholder.

(B) The product of the percentage of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and the adjustments provided in section 9(4)(a) and (b) minus the loss adjustment.

(c) Subject to section 36d, for a taxpayer that is eligible for the credit under this subsection for tax years beginning after December 31, 1997, the credit determined under this subsection shall be reduced by the following percentages in the following circumstances:

(i) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is more than \$95,000.00 but less than \$100,000.00, the credit is reduced by 20%.

(ii) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$100,000.00 or more but less than \$105,000.00, the credit is reduced by 40%.

(iii) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$105,000.00 or more but less than \$110,000.00, the credit is reduced by 60%.

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(iv) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$110,000.00 or more but less than \$115,000.00, the credit is reduced by 80%.

(3) For the purposes of determining disqualification under subsection (2), an active shareholder's share of business income shall not be attributed to another active shareholder.

(4) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by section 31. For tax years commencing before January 1, 1989, the credit is a percentage reduction in tax liability. For tax years commencing on and after January 1, 1989 and through tax years commencing in 1991, the credit is the greater of the amount by which the tax imposed by section 31 exceeds 4% of adjusted business income or 3% of adjusted business income for tax years commencing after 1991 or a percentage reduction in tax liability. However, beginning October 1, 1994, the percentage of adjusted business income shall be 2%. The department shall annualize the rates provided under this subsection as necessary for tax years that end after September 30, 1994 and the applicable annualized rate shall be imposed for those tax years.

(5) The percentage reduction provided in subsection (4) is calculated by subtracting from 100% the percentage computed by dividing adjusted business income by 45% of tax base.

(6) If gross receipts exceed \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for tax years commencing in 1991; or \$9,000,000.00 for tax years commencing after 1991, the credit shall be reduced by a fraction, the numerator of which is the amount of gross receipts over \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for tax years commencing in 1991; or \$9,000,000.00 for tax years commencing after 1991, and the denominator of which is \$1,000,000.00. The credit shall not exceed 50% for tax years commencing before January 1, 1984; 90% for tax years commencing on or after January 1, 1984 and before January 1, 1988; or 100% for tax years commencing on and after January 1, 1988 of the tax liability imposed by section 31.

(7) An affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall not take the credit allowed by this section unless the business activities of the entities are consolidated.

(8) The department shall permit a taxpayer who elects to claim the credit allowed by this section based on the amount by which the tax imposed by section 31 exceeds the percentage of adjusted business income for the tax year as determined under subsection (4), and who is not required to reduce the credit pursuant to subsection (2) or (6), to file and pay the tax imposed by this act without computing the tax imposed under section 31.

History: Add. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1982, Act 216, Imd. Eff. July 8, 1982;—Am. 1988, Act 390, Imd. Eff. Dec. 21, 1988;—Am. 1990, Act 257, Imd. Eff. Oct. 15, 1990;—Am. 1992, Act 98, Imd. Eff. June 22, 1992;—Am. 1994, Act 245, Eff. July 7, 1994;—Am. 1995, Act 284, Imd. Eff. Jan. 9, 1996.

Compiler's note: Section 2 of Act 216 of 1982 provides: "This amendatory act shall take effect for tax years commencing on or after January 1, 1984 unless the department of treasury certifies that net collections after refunds of the tax imposed by this act for the 1982-1983 state fiscal year are less than the sum of \$25,000,000.00 plus the product of the percentage increase in the implicit price deflator for government purchases of state and local goods and services, as reported by the bureau of economic analysis of the United States department of commerce for the 1982-1983 state fiscal year multiplied by the net collections after refunds for the 1981-1982 state fiscal year, in which case this amendatory act shall not take effect."

Enacting section 2 of Act 216 of 1982, as amended by Act 250 of 1983, Imd. Eff. Dec. 29, 1983, provides: "This amendatory act shall take effect for tax years commencing on or after January 1, 1984."

******* 208.36a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.36a Credit against tax imposed by act; amount; refunding excess credit to taxpayer; eligibility of exempt farmers for refund.

Sec. 36a. (1) A taxpayer may claim a credit against the tax imposed by this act for a taxable year encompassing all or a portion of the period between May 1, 1983 and September 15, 1983 in an amount equal to the difference

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determined by subtracting subdivision (b) from subdivision (a):

(a) One hundred percent of the qualified first-year wages that may be taken into account with respect to any qualified summer youth employee who is a resident of Michigan, as determined and defined by section 51(d)(12) of the internal revenue code, for which the taxpayer is entitled to a credit under section 44B of the internal revenue code for service rendered in Michigan during any 90-day period between May 1, 1983 and September 15, 1983.

(b) The amount of any credit the taxpayer is entitled to under section 44B of the internal revenue code, notwithstanding the limitations of section 53 of the internal revenue code, for qualified first-year wages attributable to service rendered in Michigan by a qualified summer youth employee who is a resident of Michigan, as determined and defined by section 51(d)(12) of the internal revenue code, during any 90-day period between May 1, 1983 and September 15, 1983.

(2) If the credit allowed by this section exceeds the tax liability of the taxpayer for the taxable year, the excess shall be refunded to the taxpayer.

(3) Farmers who are exempt from the single business tax shall be eligible for refunds under section 36a.

History: Add. 1983, Act 85, Imd. Eff. June 16, 1983.

******* 208.36b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.36b Credit for qualified investments; disposition of portion of credit exceeding tax liability; revocation of credit; report.

Sec. 36b. (1) As used in this section:

(a) "Company" means a minority venture capital company or a MESBIC as defined under section 61 of the Michigan strategic fund act, Act No. 270 of the Public Acts of 1984, being section 125.2061 of the Michigan Compiled Laws.

(b) "Fund" means the Michigan strategic fund created by section 5 of the Michigan strategic fund act, Act No. 270 of the Public Acts of 1984, being section 125.2005 of the Michigan Compiled Laws.

(c) "Certification" means the certification granted to a company pursuant to section 69a of the Michigan strategic fund act, Act No. 270 of the Public Acts of 1984, being section 125.2069a of the Michigan Compiled Laws.

(d) "Qualified investment" means an investment made pursuant to section 69a of the Michigan strategic fund act, Act No. 270 of the Public Acts of 1984, being section 125.2069a of the Michigan Compiled Laws, in an equity interest of a company which is made before or during the time period in which the company becomes certified under section 63 of the Michigan strategic fund act, Act No. 270 of the Public Acts of 1984, being section 125.2063 of the Michigan Compiled Laws, as an eligible recipient of investments that qualify for a credit under this act.

(2) A person subject to the tax imposed by this act may credit against the tax imposed by this act for the taxable year an amount equal to 50% of that portion of the amount of the claimant's qualified investments if the qualified investments were made after the effective date of this section and the person received a tax credit certification in that taxable year.

(3) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceeds the claimant's tax liability for the taxable year, that portion which exceeds the tax liability for the taxable year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years until used or recaptured pursuant to subsection (4).

(4) Notwithstanding the limitations provided by sections 85 and 95, if the certification of a company is revoked within 6 years after the tax year for which a claimant who is an insider of that company has received a credit pursuant to this section for an investment in that company, the credit the claimant who is an insider of that company received shall be revoked and all carried forward credits of the taxpayer for investments in that company shall be forfeited and any previously applied portion of that credit shall be added to the tax liability of the taxpayer in the tax year when revocation occurred. For purposes of this subsection, "insider" means an officer, director, or employee, or a person who owns not less than 10% of the company whose certification was revoked.

(5) On or before June 30, 1987, the department of treasury and the department of commerce shall submit to the chairperson of the house taxation committee and the chairperson of the senate finance committee a report detailing the number of taxpayers claiming a credit under this section, the amount of credits, the amount by which these credits reduced tax liabilities under this act in each calendar year, the amount and disposition of investments made by companies receiving certification, and an estimate of the net tax revenue increases that may be attributable to

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businesses in which investments have been made by companies that are eligible recipients of investments that qualified for a tax credit under this section.

History: Add. 1986, Act 136, Imd. Eff. June 25, 1986.

Compiler's note: Sections 85 and 95, referred to in subsection (4), were repealed by Act 139 of 1985, Eff. Mar. 26, 1986.

******* 208.36c THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.36c Tax credit; calculations; tax year in which claimed; applicability.

Sec. 36c. (1) For tax years that begin after December 31, 1996 and before January 1, 2000 and if section 23(e) is in effect, a taxpayer may claim a credit equal to a positive amount, if any, that results from the following calculations:

- (a) Calculate the taxpayer's tax liability for the tax year before the credit under this section is taken.
 - (b) Calculate the taxpayer's tax liability for the tax year including the following criteria:
 - (i) Determine adjustments under section 23 as if section 23(c) is in effect and section 23(e), (f), (g), and (i) are not in effect.
 - (ii) Determine adjustments under section 23b as if section 23b(c) is in effect and section 23b(d), (e), and (g) are not in effect.
 - (iii) Determine the apportionment factor for the tax year as if section 45(4) is in effect and section 45(5), (6), and (7) are not in effect.
 - (iv) Section 45a is not in effect.
 - (c) Subtract the amount determined under subdivision (b) from the amount determined under subdivision (a). Subtract \$5,000,000.00 from that result.
- (2) The credit under this section shall not be claimed by a taxpayer for a tax year in which the taxpayer claims a reduction under section 31(2).
- (3) This section does not apply to taxpayers that determine adjusted tax base under section 22a.

History: Add. 1995, Act 282, Imd. Eff. Jan. 9, 1996.

******* 208.36d THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.36d Determination of reduction percentage under § 208.36(2)(c).

Sec. 36d. To determine the reduction percentage under section 36(2)(c), the following apply:

- (a) The reduction percentage for a partnership or subchapter S corporation is based on the distributive share of adjusted gross income minus loss adjustment of the partner or shareholder with the greatest distributive share of adjusted gross income minus loss adjustment.
- (b) The reduction percentage for a corporation other than a subchapter S corporation is the greater of the following:
 - (i) The reduction percentage based on the compensation and directors' fees of the shareholder or officer with the greatest amount of compensation and directors' fees.
 - (ii) The reduction percentage based on the sum of the amounts in section 36(2)(b)(ii)(A) and (B) for the shareholder or officer with the greatest sum of the amounts in section 36(2)(b)(ii)(A) and (B).

History: Add. 1995, Act 285, Imd. Eff. Jan. 9, 1996.

******* 208.37 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37 Credit for unincorporated taxpayer or for taxpayer electing subchapter S provisions; schedule.

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Sec. 37. Every taxpayer who is unincorporated or who elects the subchapter S provisions of the internal revenue code shall be allowed a credit for a portion of the single business tax liability after the calculation of the credit provided in section 36 for the same year according to the following schedule:

<u>If Business Income Is</u>	<u>The Credit Is</u>
\$20,000.00 or less	20% of the single business tax liability
more than \$20,000.00, but less than \$40,000.00	15% of the single business tax liability
\$40,000.00 or more	10% of the single business tax liability.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977.

******* 208.37a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37a Credit for tax liability attributable to qualified business activity in enterprise zone; limitation; definitions.

Sec. 37a. (1) A taxpayer that is a qualified business may credit against the tax imposed by section 31 an amount equal to the tax liability attributable to qualified business activity in an enterprise zone.

(2) The tax liability attributable to qualified business activity in an enterprise zone is the tax liability imposed by this act after the calculation of the credits provided in sections 36, 37, 38, and 39 multiplied by 1 of the following:

(a) For a qualified new business, a fraction the numerator of which is the ratio of property located in the enterprise zone to all property located in this state plus the ratio of payroll in the enterprise zone to all payroll in this state and the denominator of which is 2.

(b) For a qualified existing business, a fraction the numerator of which is the ratio of the value of a new facility to all property located in this state plus the ratio of payroll attributable to the new facility to all payroll in this state and the denominator of which is 2.

(3) The credit allowed under this section shall not exceed the tax liability of the taxpayer for the tax year.

(4) As used in this section, “enterprise zone”, “new facility”, “qualified business activity”, “qualified existing business”, and “qualified new business” mean those terms as defined in the enterprise zone act.

History: Add. 1985, Act 226, Imd. Eff. Jan. 13, 1986.

******* 208.37b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37b Credit for tax liability attributable to high technology activity.

Sec. 37b. (1) A taxpayer engaged in a high technology activity that qualifies under the criteria of subsection (3) may credit against the tax imposed by section 31 an amount equal to the tax liability attributable to that high technology activity.

(2) The tax liability attributable to the high technology activity described in subsection (1) is the tax liability imposed by this act after the calculation of the credits provided in sections 36, 37, 38, and 39 multiplied by a fraction the numerator of which is the ratio of property used for the high technology activity to all property located in this state plus the ratio of payroll for the high technology activity to all payroll in this state and the denominator of which is 2.

(3) To qualify for the credit allowed under this section, the taxpayer shall comply with all of the following:

(a) The high technology activity is the primary purpose and use of eligible property subject to a tax increment financing plan that provides for the use of captured assessed value from that eligible property.

(b) The taxpayer was not located in the central city before the authority district in which the eligible property is

located was created.

(c) The department of treasury issues a certificate to the taxpayer certifying that the eligible property is located in a central city and is used for a high technology activity and that the taxpayer meets the other requirements of this section. A certificate issued under this subdivision shall be effective for 10 years after the date of issuance or until the certificate is revoked. The department of treasury shall revoke a certificate if the taxpayer no longer meets the requirements of this section. A certificate shall not be issued by the department of treasury after December 31, 1991.

(4) The credit allowed under this section shall not exceed the tax liability of the taxpayer for the tax year.

(5) As used in this section:

(a) "Authority district", "eligible property", and "tax increment financing plan" mean those terms as used in the local development financing act.

(b) "Central city" means a city that has the largest population within a metropolitan statistical area as designated by the United States bureau of the census and meets all of the following criteria or a city that has the largest population within a county, but not less than 40,000, and meets all of the following criteria:

(i) Has had a poverty rate for families that is more than the statewide average rate as defined by the most recent federal decennial census.

(ii) Shows a population decline from the next most recent to the most recent federal decennial census.

(iii) Has had an increase in state equalized valuation of real and personal property over the prior 10 calendar years that is less than the statewide average increase in state equalized valuation over the prior 10 calendar years.

(iv) Has had an unemployment rate higher than the state average unemployment rate for 3 of the preceding 5 calendar years.

However, a central city does not include a city of which all or a portion has been designated as an enterprise zone under the enterprise zone act, Act No. 224 of the Public Acts of 1985, being sections 125.2101 to 125.2122 of the Michigan Compiled Laws.

(c) "High technology activity" means an activity specified by section 2(h)(iii) of the local development financing act but shall exclude those businesses also qualifying as eligible property under section 2(h)(i) or 2(h)(ii) of the local development financing act or those businesses whose high technology activity relates to the activity of a business that also qualifies as eligible property under section 2(h)(i) or 2(h)(ii) of the local development financing act.

History: Add. 1986, Act 283, Imd. Eff. Dec. 22, 1986.

******* 208.37c THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37c Tax credit; authorization and amount determined by Michigan economic growth authority; limitation; certificate; contents; refund; payments to department where qualified new jobs removed from state; statement; limitation on credits claimed; certificate issued after December 31, 2009; distressed business; report; definitions.

Sec. 37c. (1) For tax years beginning after December 31, 1994 and for a period of time not to exceed 20 years as determined by the Michigan economic growth authority, a taxpayer that is an authorized business may credit against the tax imposed by section 31 the amount certified each year by the Michigan economic growth authority.

(2) The credit allowed under subsection (1) for an authorized business for the tax year as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, shall not exceed the payroll of the authorized business attributable to employees who perform qualified new jobs multiplied by the tax rate.

(3) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the return filed under this act on which a credit under this section is claimed.

(4) The certificate required by subsection (3) shall state all of the following:

(a) The taxpayer is an authorized business.

(b) The amount of the credit under this section for the authorized business for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

(d) For a taxpayer that claims a credit allowed under subsection (10), the taxpayer is a distressed business.

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(5) If the credit allowed under subsection (1) exceeds the tax liability of the taxpayer for the tax year, the excess shall be refunded to the taxpayer.

(6) A taxpayer that claims a credit under subsection (1) or section 37d that has an agreement with the Michigan economic growth authority based on qualified new jobs as defined in section 3(n)(ii) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803, that removes from this state 51% or more of those qualified new jobs within 3 years after the first year in which the taxpayer claims a credit described in this subsection shall pay to the department no later than 12 months after those qualified new jobs are removed from the state an amount equal to the total of all credits described in this subsection that were claimed by the taxpayer.

(7) If the Michigan economic growth authority or a designee of the Michigan economic growth authority requests that a taxpayer who claims the credit under this section get a statement prepared by a certified public accountant verifying that the actual number of new jobs created is the same number of new jobs used to calculate the credit under this section, the taxpayer shall get the statement and attach that statement to its annual return under this act on which the credit under this section is claimed.

(8) For a credit allowed under subsection (1), an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall claim only 1 credit for each tax year for each expansion or location evidenced by a written agreement whether or not a combined or consolidated return is filed.

(9) A credit shall not be claimed by a taxpayer under subsection (1) if the taxpayer's initial certification as required in subsection (3) is issued after December 31, 2009.

(10) In addition to the credit allowed under subsection (1), for tax years that begin after December 31, 2003 and before January 1, 2007, a taxpayer that is an authorized business and is a distressed business, with an initial certification under section 9 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.809, issued after December 31, 2003 and before January 1, 2005 may claim a credit equal to the sum of the following:

(a) Up to 50% of the tax paid in the tax year under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, based on qualified new jobs as defined in section 3(n)(iii) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(b) Up to 25% of the tax paid in the tax year under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, based on all jobs other than qualified new jobs as defined in section 3(n)(iii) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(11) An authorized business that is a distressed business shall apply to the Michigan economic growth authority, which shall determine the percentage under subsection (10) for that authorized business. The Michigan economic growth authority shall issue a certificate to the authorized business stating the percentage amount and the tax years to which that percentage applies not more than 30 days after receipt of an application under this subsection.

(12) If the credit allowed under subsection (10) for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 10 tax years or until the excess credit is used up, whichever occurs first.

(13) On or before September 1, 2004, the Michigan economic growth authority shall submit a report to the legislature that includes all of the following information related to credits allowed under subsections (10) and (11):

(a) The status of implementing the provisions of subsection (11) including development of the application form and the standards for determining the percentages for the credits under subsection (10).

(b) The number of authorized businesses that have applied for the credit.

(c) The number of certificates issued under subsection (11).

(14) As used in this section:

(a) "Authority" or "Michigan economic growth authority" means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(b) "Authorized business", "facility", "full-time job", "qualified high-technology business", and "written agreement" mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(c) "Payroll" means the total salaries and wages before deducting any personal or dependency exemptions.

(d) "Qualified new jobs" means 1 or more of the following:

(i) For a credit allowed under subsection (1), the average number of full-time jobs at a facility of an authorized business for a tax year in excess of the average number of full-time jobs the authorized business maintained in this state prior to the expansion or location as that is determined under the Michigan economic growth authority act,

1995 PA 24, MCL 207.801 to 207.810.

(ii) After July 1, 2000 for a credit allowed under subsection (1), the average number of full-time jobs at a facility created by an eligible business within 120 days before becoming an authorized business, that is in excess of the average number of full-time jobs that the business maintained in this state 120 days before becoming an authorized business, as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(iii) For credits allowed under subsection (10), that term as defined in section 3(n)(iii) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(e) "Tax rate" means the rate imposed under sections 51, 51d, and 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51, 206.51d, and 206.51e, for the tax year in which the tax year of the taxpayer for which the credit is being computed begins.

History: Add. 1995, Act 23, Imd. Eff. Apr. 18, 1995;—Am. 1996, Act 470, Imd. Eff. Dec. 26, 1996;—Am. 1999, Act 100, Imd. Eff. July 6, 1999;—Am. 2000, Act 429, Imd. Eff. Jan. 9, 2001;—Am. 2003, Act 251, Imd. Eff. Dec. 29, 2003;—Am. 2004, Act 80, Imd. Eff. Apr. 22, 2004.

******* 208.37d THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS
THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37d Tax credit; amount; certificate issued by Michigan economic growth authority; contents of certificate; tax liability; carrying forward unused credit; certificate issued after December 31, 2009; definitions.

Sec. 37d. (1) For tax years beginning after December 31, 1994, and for a period of time not to exceed 20 years as determined by the Michigan economic growth authority plus any carryforward years allowed under subsection (5), a taxpayer that is an authorized business may credit against the tax imposed by section 31 an amount equal to the tax liability attributable to authorized business activity.

(2) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the return filed under this act on which a credit under this section is claimed.

(3) The certificate required by subsection (2) shall state all of the following:

- (a) The taxpayer is an authorized business.
- (b) The amount of the credit under this section for the authorized business for the designated tax year.
- (c) The taxpayer's federal employer identification number or the Michigan treasury number assigned.
- (4) The tax liability attributable to authorized business activity is the tax liability imposed by this act after the calculation of the credits provided in sections 36, 37, 38, and 39 multiplied by either of the following fractions as appropriate:

(a) For an authorized business locating a facility in this state, a fraction the numerator of which is the ratio of the value of the facility to all of the taxpayer's property located in this state plus the ratio of the taxpayer's payroll attributable to qualified new jobs to all of the taxpayer's payroll in this state and the denominator of which is 2.

(b) For an authorized business expanding at an existing site, a fraction the numerator of which is the ratio of the value of the new property added to the site as part of that expansion to all of the taxpayer's property located in this state plus the ratio of the taxpayer's payroll attributable to qualified new jobs to all of the taxpayer's payroll in this state and the denominator of which is 2.

(5) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first.

(6) A credit shall not be claimed by a taxpayer under this section if the taxpayer's initial certification, as required in subsection (2), is issued after December 31, 2009.

(7) As used in this section:

(a) "Authorized business" and "facility" mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(b) "Authorized business activity" means the business activity of an authorized business certified under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(c) "Michigan economic growth authority" means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

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(d) "Qualified new jobs" means that term as defined in section 37c.

History: Add. 1995, Act 23, Imd. Eff. Apr. 18, 1995;—Am. 1996, Act 470, Imd. Eff. Dec. 26, 1996;—Am. 1999, Act 100, Imd. Eff. July 6, 1999;—Am. 2003, Act 250, Imd. Eff. Dec. 29, 2003.

******* 208.37e THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37e Tax credit; determination under Michigan early stage venture capital investment act of 2003.

Sec. 37e. (1) For tax years that begin after December 31, 2008 and before January 1, 2020, a taxpayer that is an investor may claim a credit against the tax imposed by this act equal to the credit amount determined and certified under this section and the Michigan early stage venture capital investment act of 2003.

(2) The total amount of all tax credits certified under this section and the Michigan early stage venture capital investment act of 2003 for all taxpayers for all years shall not exceed \$150,000,000.00.

(3) Investors shall apply to the Michigan early stage venture capital investment corporation for certification of allowable tax credits.

(4) The Michigan early stage venture capital investment corporation shall determine which investors are eligible for tax credits and the amount of the tax credit allowed to each investor as provided in the Michigan early stage venture capital investment act of 2003.

(5) The certificate shall be attached to the taxpayer's annual return under this act for the first tax year in which a tax credit or any portion of the tax credit allowed is claimed, which shall be the tax year indicated on the certificate.

(6) A credit under this section shall be claimed only in a tax year that begins after December 31, 2008 and before January 1, 2020. The credit allowed for that tax year shall not exceed the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the taxpayer and the Michigan early stage venture capital investment corporation pursuant to section 17 of the Michigan early stage venture capital investment act of 2003.

(7) The total amount of all credits authorized for any 1 calendar year under this section pursuant to the agreements entered into by the taxpayer and the Michigan early stage venture capital investment corporation pursuant to section 17 of the Michigan early stage venture capital investment act of 2003 shall not exceed \$30,000,000.00.

(8) If the taxpayer's credit allowed under this section for a tax year exceeds the taxpayer's tax liability for the tax year, that portion of the credit that exceeds the tax liability for the tax year shall be refunded.

(9) The fund manager shall invest and budget in such a manner that no credits are claimed under this section in any tax year before tax years that begin after December 31, 2008.

(10) For tax years that begin after December 31, 2009, if a credit under this section is not allowed against the taxpayer's tax liability under this act or against any successor tax to the tax imposed by this act, a taxpayer to whom a certificate has been issued under the Michigan early stage venture capital investment act of 2003 may claim a credit as allowed under section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270, or transfer that certificate and the credit allowed pursuant to that certificate to a person who may claim the tax credit as allowed under section 270 of the income tax act of 1967, 1967 PA 281, MCL 206.270. The credit amount under this subsection shall be equal to the remaining credit allowable and may be claimed only for tax years that begin after December 31, 2009 and before January 1, 2020.

(11) As used in this section:

(a) "Board", "fund manager", and "investor" mean those terms as defined in the Michigan early stage venture capital investment act of 2003.

(b) "Certificate" means the certificate issued under section 23 of the Michigan early stage venture capital investment act of 2003.

History: Add. 2003, Act 297, Imd. Eff. Jan. 8, 2004.

******* 208.37f THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37f Tax credit; payment to employees performing created jobs.

Sec. 37f. (1) For tax years that begin after December 31, 2004 and before January 1, 2006, a taxpayer with gross receipts of \$10,000,000.00 or less for a tax year may claim a credit against the tax imposed by this act equal to the following percentages of compensation paid by the taxpayer to employees who perform created jobs, as determined under subsection (2), for that tax year in the following circumstances:

- (a) If the taxpayer makes capital investment in this state of less than \$150,000.00 in the tax year, 0.50%.
- (b) If the taxpayer makes capital investment in this state of \$150,000.00 or more but less than \$750,000.00, 1.5%.
- (c) If the taxpayer makes capital investment in this state of \$750,000.00 or more in the tax year, 2.0%.

(2) Compensation paid to employees who perform created jobs for purposes of subsection (1) is determined as follows:

(a) For tax years that begin in 2004 and 2005, determine for each tax year the full-time equivalent job for each employee, which shall be the lesser of the following:

- (i) An employment period ratio, which is equal to the employee's weeks worked in the tax year divided by 52.
- (ii) An hours worked ratio, which is equal to the employee's hours worked during the tax year divided by the full-time equivalent annual hours of work set by the taxpayer. Each taxpayer shall set a full-time equivalent annual hours of work standard which shall be not less than 1,750 hours and not more than 2,080 hours.

(b) For the tax year that begins in 2005, determine the average compensation for full-time equivalent new jobs that perform high-technology activity or manufacturing jobs as follows:

- (i) For the tax year that begins in 2005, calculate the sum of full-time equivalent jobs calculated in subdivision (a) for employees who perform high-technology activity or manufacturing jobs and who were hired in the tax year.
- (ii) Determine the total compensation, not to exceed \$85,000.00 per employee, paid for all jobs under subparagraph (i).

(iii) Divide the amount determined under subparagraph (ii) by the number determined under subparagraph (i).

(c) Determine the number of created jobs, which shall be determined as follows:

- (i) For the tax year that begins in 2004, calculate the sum of the number of full-time equivalent jobs calculated under subdivision (a) for all employees.
- (ii) For the tax year that begins in 2005, calculate the sum of the number of full-time equivalent jobs calculated under subdivision (a) for all employees.

(iii) Subtract the number under subparagraph (i) from the number under subparagraph (ii).

(iv) Determine the lesser of (b)(i) and (c)(iii).

(d) Multiply the number under subdivision (c)(iv) by the 2005 average compensation under subdivision (b)(iii).

(3) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 10 tax years or until the excess credit is used up, whichever occurs first.

(4) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine gross receipts for purposes of this section on a consolidated basis.

(5) For purposes of determining compensation paid to employees, the taxpayer shall not include compensation paid to a spouse, parent, sibling, child, stepchild, adopted child, or stepparent of an active shareholder or officer, a shareholder of an S corporation, a partner of a partnership, a member of a limited liability company, or an individual who is a sole proprietor.

(6) The capital investment threshold for purposes of subsection (1) must be met at the principal place of employment of any employee of the taxpayer who performs a created job.

(7) For purposes of the credit under this section, leased employees are considered employees of the entity whose employment operations are managed by a professional employer organization.

(8) As used in this section:

- (a) "Active shareholder" and "officer" mean those terms as defined in section 36.
- (b) "Capital investment" means investment that can be used to calculate a credit under section 35a.
- (c) "Created jobs" means jobs that meet all of the following criteria:
 - (i) Are jobs that perform high-technology activity or manufacturing jobs.
 - (ii) Did not exist in this state in the immediately preceding tax year.
 - (iii) Represent an overall increase in full-time equivalent jobs of the taxpayer in this state for the tax year above the total number of full-time equivalent jobs of the taxpayer in the immediately preceding tax year.

(iv) Is not a job into which an employee transfers if the employee worked in this state for the taxpayer, a related entity of the taxpayer, or an entity with which the taxpayer files a consolidated return under section 77 in another job prior to beginning the created job.

(v) The benefits for the employee in the created job include coverage under health and welfare and noninsured benefit plans, including, but not limited to, prescription coverage, primary health care coverage, and hospitalization that is not limited to emergency room services or subject to dollar limits, deductibles, and coinsurance provisions that are not less favorable than those for physical illness generally.

(vi) Is not a qualified new job used to calculate a credit under section 37c or 37d.

(d) "High-technology activity" means that term as defined in section 3 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803.

(e) "Manufacturing jobs" are jobs for a company that has a classification under sector 33, subsector 321, or subsector 322 of the North American industrial classification system (NAICS).

(f) "Related entity" means an entity that meets any of the following criteria:

(i) More than 1% is owned by 1 of the following:

(A) Another entity.

(B) An entity that owns more than 1% of another entity.

(ii) It owns more than 1% of another entity.

(iii) It markets itself under a common name or trademark with any other entity or receives payroll, human resources, administrative, or other similar services from a company that provides those services to another entity.

History: Add. 2004, Act 319, Imd. Eff. Aug. 27, 2004.

******* 208.37g THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.37g Tax credit for donated automobile.

Sec. 37g. (1) For tax years that begin after December 31, 2004 and before January 1, 2010, a taxpayer may claim a credit against the tax imposed by this act, subject to the applicable limitations provided by this section, in an amount equal to 50% of the fair market value of an automobile donated by the taxpayer to a qualified organization that intends to provide the automobile to a qualified recipient.

(2) The value of a passenger vehicle shall be determined by the qualified organization or by using the value of the automobile in the appropriate guide published by the national automobile dealers association, whichever is less.

(3) The amount allowable as a credit under this section for a tax year shall not exceed \$100.00.

(4) If the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that amount that exceeds the tax liability shall not be refunded.

(5) As used in this section, "qualified organization" and "qualified recipient" mean those terms as defined in section 4y of the use tax act, 1937 PA 94, MCL 205.94y.

History: Add. 2004, Act 302, Imd. Eff. July 23, 2004.

******* 208.38 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38 Tax credit for charitable contributions to public broadcast station; limitations; conditions; annual report; financial statements; definitions.

Sec. 38. (1) At the election of taxpayers not subject to Act No. 281 of the Public Acts of 1967, as amended, being sections 206.1 to 206.532 of the Michigan Compiled Laws, there shall be allowed as a credit against the tax imposed by this act for the taxable year, an amount, subject to the applicable limitations provided by this section, equal to 50% of the aggregate amount of charitable contributions made by the taxpayer during the year to a public broadcast station as defined by 47 U.S.C. 397 which is not affiliated with an institution of higher education, public libraries, institutions of higher learning located within this state, the Michigan colleges foundation, or to a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of institutions of higher learning. An institution of higher learning which receives the contributions through a nonprofit

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corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of the institution of higher learning, shall make an annual report to the chairpersons of the house and senate appropriations committees and the house taxation committee and senate finance committee indicating in what manner the contributions were or are being used and any specific conditions under which a particular contribution was received and how the money or property from that contribution was or is being used. The report shall be due not later than February 1 for the immediately preceding calendar year and shall be issued in 1981 and 1982 only. The tax credit shall be permitted only where the donee corporation, fund, foundation, trust, or association is controlled or approved and reviewed by the governing boards of the institutions benefiting from the charitable contributions. The nonprofit corporation, fund, foundation, trust, or association shall provide copies of their annual independently audited financial statements to the auditor general of the state and chairpersons of the senate and house appropriations committees.

(2) The amount allowable as a credit under this section for any taxable year shall not exceed 5% of the tax liability for that year as determined without regard to this section or \$5,000.00, whichever is less.

(3) As used in this section, "institution of higher learning" means an educational institution located within this state meeting all of the following requirements:

(a) It maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are carried on.

(b) It regularly offers education above the twelfth grade.

(c) It awards associate, bachelors, masters, or doctoral degrees or any combination of those degrees or higher education credits acceptable for those degrees granted by other institutions of higher learning.

(d) It is recognized by the state board of education as an institution of higher learning and appears as an institution of higher learning in the annual publication of the department of education entitled "the directory of institutions of higher education".

(4) As used in this section, "public library or libraries" means a public library as defined in section 2 of Act No. 89 of the Public Acts of 1977, being section 397.552 of the Michigan Compiled Laws.

(5) The credit allowed by this section shall not be in excess of the tax liability of the taxpayer.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1980, Act 318, Imd. Eff. Dec. 9, 1980.

Compiler's note: Section 2 of Act 318 of 1980 provides: "This amendatory act shall take effect for tax years commencing January 1, 1980." In subsection (3)(d) the word "entitled" evidently should read "entitled".

208.38a Expired. 1982, Act 393, Eff. Jan. 1, 1986.

Compiler's note: This section pertained to a tax credit in an amount equal to the dollar amount of increase in federal unemployment taxes.

******* 208.38b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38b Certain employers or carriers required to claim credit; amount; refund of credit in excess of estimated payment; subsequent increase or decrease in amount claimed; credit additional to other credits; refund of credit in excess of tax liability.

Sec. 38b. (1) For amounts paid after March 31, 1984, pursuant to section 352 of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.352 of the Michigan Compiled Laws, a taxpayer that is an employer or carrier subject to Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, shall claim a credit against the tax imposed by this act for the taxable year in an amount equal to the amount paid during that tax year by the taxpayer pursuant to section 352 of Act No. 317 of the Public Acts of 1969, as certified by the director of the bureau of worker's disability compensation pursuant to section 391(6) of Act No. 317 of the Public Acts of 1969, being section 418.391 of the Michigan Compiled Laws.

(2) A taxpayer claiming a credit under this section shall claim a portion of the credit allowed by this section equal to the payments made during a calendar quarter pursuant to section 352 of Act No. 317 of the Public Acts of 1969, against the estimated tax payments made under section 71. Any credit in excess of an estimated payment shall be refunded to the taxpayer on a quarterly basis within 60 calendar days after receipt of a properly completed estimated tax return. Any subsequent increase or decrease in the amount claimed for payments made by the insurer or self-insurer shall be reflected in the amount of the credit taken for the calendar quarter in which the amount of the

adjustment is finalized.

(3) The credit under this section is in addition to any other credits the taxpayer is eligible for under this act.

(4) Any amount of the credit under this section which is in excess of the tax liability of the taxpayer for the tax year shall be refunded, without interest, by the department to the taxpayer within 60 calendar days of receipt of a properly completed annual return required by this act.

History: Add. 1984, Act 45, Imd. Eff. Apr. 9, 1984;—Am. 1995, Act 135, Imd. Eff. July 10, 1995.

******* 208.38c THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS
THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38c Tax credit for 50% of contribution to endowment fund of community foundation; limitations; credit nonrefundable; “community foundation” defined; report.

Sec. 38c. (1) For the 1989 tax year and each tax year after the 1989 tax year and subject to the applicable limitations in this section, a taxpayer who does not claim a credit under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may credit against the tax imposed by this act 50% of the amount the taxpayer contributes during the taxable year to an endowment fund of a community foundation.

(2) The credit allowed by this section shall not exceed 5% of the taxpayer's tax liability for the tax year before claiming any credits allowed by this act or \$5,000.00, whichever is less.

(3) The credit allowed by this section is nonrefundable so that a taxpayer shall not claim under this section a total credit amount that reduces the taxpayer's tax liability to less than zero.

(4) As used in this section, “community foundation” means an organization that applies for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit and that the department certifies for that tax year as meeting all of the following requirements:

(a) Qualifies for exemption from federal income taxation under section 501(c)(3) of the internal revenue code.

(b) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality or county.

(c) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served.

(d) Is publicly supported as defined by the regulations of the United States department of treasury, 26 C.F.R. 1.170A-9(e)(10). To maintain certification, the community foundation shall submit documentation to the department annually that demonstrates compliance with this subdivision.

(e) Is not a supporting organization as an organization is described in section 509(a)(3) of the internal revenue code and the regulations of the United States department of treasury, 26 C.F.R. 1.509(a)-4 and 1.509(a)-5.

(f) Meets the requirements for treatment as a single entity contained in the regulations of the United States department of treasury, 26 C.F.R. 1.170A-9(e)(11).

(g) Except as provided in subsection (6), is incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit under this section is claimed and that has an endowment value of at least \$100,000.00 before the expiration of 18 months after the community foundation is incorporated or established.

(h) Has an independent governing body representing the general public's interest and that is not appointed by a single outside entity.

(i) Provides evidence to the department that the community foundation has, before the expiration of 6 months after the community foundation is incorporated or established, and maintains continually during the tax year for which the credit under this section is claimed, at least 1 part-time or full-time employee.

(j) For community foundations that have an endowment value of \$1,000,000.00 or more only, the community foundation is subject to an annual independent financial audit and provides copies of that audit to the department not more than 3 months after the completion of the audit. For community foundations that have an endowment value of less than \$1,000,000.00, the community foundation is subject to an annual review and an audit every third year.

(k) In addition to all other criteria listed in this subsection for a community foundation that is incorporated or established after the effective date of the amendatory act that added this subdivision, operates in a county of this state that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing certified community foundation.

(5) On or before July 1 of each year, the department shall report to the house of representatives committee on

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taxation and the senate committee on finance the total amount of tax credits claimed under this section and under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, for the immediately preceding tax year.

(6) A taxpayer may claim a credit under this section for contributions to a community foundation made before the expiration of the 18-month period after a community foundation was incorporated or established during which the community foundation must build an endowment value of \$100,000.00 as provided in subsection (4)(g). If the community foundation does not reach the required \$100,000.00 endowment value during that 18-month period, contributions to the community foundation made after the date on which the 18-month period expires shall not be used to calculate a credit under this section. At any time after the expiration of the 18-month period under subsection (4)(g) that the community foundation has an endowment value of \$100,000.00, the community foundation may apply to the department for certification under this section.

History: Add. 1988, Act 514, Imd. Eff. Dec. 29, 1988;—Am. 1990, Act 135, Imd. Eff. June 26, 1990;—Am. 1991, Act 170, Imd. Eff. Dec. 20, 1991;—Am. 1993, Act 267, Imd. Eff. Dec. 28, 1993;—Am. 1994, Act 231, Imd. Eff. June 30, 1994;—Am. 1997, Act 190, Imd. Eff. Dec. 30, 1997;—Am. 2000, Act 429, Imd. Eff. Jan. 9, 2001.

Compiler's note: Section 2 of Act 135 of 1990 provides: "This amendatory act shall apply to tax years after 1989."

******* 208.38d THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38d Tax credit equal to 10% of cost of eligible investment paid or accrued.

Sec. 38d. (1) For tax years that begin after December 31, 1996 and before January 1, 2001, a qualified taxpayer may claim a credit against the tax imposed by this act equal to 10% of the cost of eligible investment paid or accrued by the qualified taxpayer in the tax year.

(2) The maximum total credits claimed under this section for all tax years by each taxpayer that claims a credit under this section shall not exceed \$1,000,000.00.

(3) The credit allowed under this section shall be calculated after application of all other credits allowed under this act.

(4) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first.

(5) If eligible investment is for the purchase of tangible assets, if the cost of those assets will have been used to calculate a credit under this section, and if the tangible assets are sold or disposed of or transferred from eligible property to any other location, add 10% of the federal basis used for determining gain or loss as of the date of the sale, disposition, or transfer to the taxpayer's tax liability for the tax year in which the sale, disposition, or transfer occurs.

(6) An affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined in the internal revenue code shall consolidate the eligible investment of the members of the affiliated group, member corporations of the controlled group, or entities under common control for purposes of determining when the maximum allowable credit limit under subsection (2) has been reached.

(7) The department shall develop procedures to implement this section.

(8) As used in this section:

(a) "Eligible activity" means that term as defined in the brownfield redevelopment financing act.

(b) "Eligible investment" means demolition, construction, restoration, alteration, renovation, or improvement of buildings on eligible property and the addition of machinery, equipment, and fixtures to eligible property after the date that eligible activity on that eligible property has started pursuant to a brownfield plan under the brownfield redevelopment financing act, if the costs of the eligible investment are not otherwise reimbursed to the taxpayer or paid for on behalf of the taxpayer from any source other than the taxpayer.

(c) "Eligible property" means property that is a facility as that term is defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, or property that was a facility as defined in section 20101 of Act No. 451 of the Public Acts of 1994 prior to the completion of eligible activity pursuant to a brownfield plan under the brownfield redevelopment financing act.

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(d) "Qualified taxpayer" means a taxpayer that meets both of the following criteria:

(i) Owns or leases an eligible property that is located within a brownfield redevelopment zone designated pursuant to the brownfield redevelopment financing act and on which eligible activity has started pursuant to a brownfield plan under the brownfield redevelopment financing act.

(ii) The taxpayer is not liable under section 20126 of part 201 of Act No. 451 of the Public Acts of 1994, being section 324.20126 of the Michigan Compiled Laws, for response activity at an eligible property to which the credit is attributable.

(e) "Response activity" means that term as defined in the brownfield redevelopment financing act.

History: Add. 1996, Act 382, Eff. Sept. 16, 1996.

******* 208.38e THIS SECTION IS REPEALED BY ACT 531 OF ACT 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38e Apprenticeship tax credit.

Sec. 38e. (1) A taxpayer may claim a credit against the tax imposed by this act equal to the sum of 50% of the qualified expenses defined in subsection (5)(d)(i) and (ii) and 100% of the qualified expenses defined in subsection (5)(d)(iii) paid by the taxpayer in the tax year in each of the following circumstances:

(a) Except for apprentices trained under subdivision (b) or (c), an amount not to exceed \$2,000.00 for each apprentice trained by the taxpayer in the tax year.

(b) For companies that have a classification under the North American industrial classification system (NAICS) of 333511, 333512, 333513, 333514, or 333515 and for tax years that begin after December 31, 2003, an amount not to exceed \$4,000.00 for each apprentice trained by the taxpayer in the tax year.

(c) For companies that have a classification under the North American industrial classification system (NAICS) of 333511, 333512, 333513, 333514, or 333515 and for tax years that begin after December 31, 2003, an amount not to exceed \$1,000.00 for each special apprentice trained by the taxpayer in the tax year.

(2) If the credit allowed under this section exceeds the tax liability of the taxpayer under this act for the tax year, that portion of the credit that exceeds the tax liability shall be refunded.

(3) The credit allowed under this section shall be claimed on the annual return required under section 73, or for a taxpayer that is not required to file an annual return, the department shall provide that the credit under this subsection may be claimed on the C-8044 form, a successor form for persons not required to file an annual return, or other simplified form prescribed by the department.

(4) For each year that this credit is in effect, the department of labor and economic growth shall prepare a report containing information including, but not limited to, the number of companies taking advantage of the apprenticeship credit, the number of apprentices participating in the program, the number of apprentices who complete a program the costs of which were the basis of a credit under this section, the number of apprentices that were hired by the taxpayer after the apprenticeship training was completed for which the taxpayer claimed a credit under this section for the costs of training that apprentice, information on the employment status of individuals who have completed an apprenticeship to the extent the information is available, and the fiscal impact of the apprenticeship credit. This report shall then be transmitted to the house tax policy and senate finance committees and to the house and senate appropriations committees. This report shall be due no later than the first day of March each year.

(5) As used in this section:

(a) "Apprentice" means a person who is a resident of this state, is 16 years of age or older but younger than 20 years of age, has not obtained a high school diploma, is enrolled in high school or a general education development (G.E.D.) test preparation program, and is trained by a taxpayer through a program that meets all of the following criteria:

(i) The program is registered with the bureau of apprenticeship and training of the United States department of labor.

(ii) The program is provided pursuant to an apprenticeship agreement signed by the taxpayer and the apprentice.

(iii) The program is filed with a local workforce development board.

(iv) The minimum term in hours for the program shall be not less than 4,000 hours.

(b) "Enrolled" means currently enrolled or expecting to enroll after a period of less than 3 months during which the program is not in operation and the apprentice is not enrolled.

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(c) "Local workforce development board" means a board established by the chief elected official of a local unit of government pursuant to the job training partnership act, Public Law 97-300, 96 Stat. 1322, that has the responsibility to ensure that the workforce needs of the employers in the geographic area governed by the local unit of government are met.

(d) "Qualified expenses" means all of the following expenses paid by the taxpayer in a tax year that begins after December 31, 1996 for expenses used to calculate a credit under subsection (1)(a) and after December 31, 2003 for expenses used to calculate a credit under subsection (1)(b) that were not paid for with funds the taxpayer received or retained that the taxpayer would not otherwise have received or retained and that are used for training an apprentice:

- (i) Salary and wages paid to an apprentice.
- (ii) Fringe benefits and other payroll expenses paid for the benefit of an apprentice.
- (iii) Costs of classroom instruction and related expenses identified as costs for which the taxpayer is responsible under an apprenticeship agreement, including but not limited to tuition, fees, and books for college level courses taken while the apprentice is enrolled in high school.

(e) "Special apprentice" means a person who is not an apprentice as defined by section (5)(a), is a resident of this state, is 16 years of age or older but younger than 25 years of age, and is trained by a taxpayer through a program that meets all of the criteria under subdivision (a)(i) to (iv).

History: Add. 1996, Act 593, Imd. Eff. Jan. 22, 1997;—Am. 1999, Act 184, Imd. Eff. Nov. 24, 1999;—Am. 2003, Act 273, Imd. Eff. Jan. 8, 2004.

******* 208.38f THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38f Contribution to shelter for homeless persons, food kitchen, food bank, or other entity; allowable tax credit.

Sec. 38f. (1) For the 1992 tax year and each tax year after the 1992 tax year, a taxpayer who does not claim a credit for a contribution to a shelter for homeless persons, food kitchen, food bank, or other entity, the primary purpose of which is to provide overnight accommodation, food, or meals to persons who are indigent under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may credit against the tax imposed by this act 50% of the cash amount the taxpayer contributes during the tax year to a shelter for homeless persons, food kitchen, food bank, or other entity, the primary purpose of which is to provide overnight accommodation, food, or meals to persons who are indigent if a contribution to that entity is tax deductible for the donor under the internal revenue code.

(2) The credit allowed by this section shall not exceed 5% of the taxpayer's tax liability for the tax year before claiming any credits allowed by this act or \$5,000.00, whichever is less.

(3) The credit allowed by this section is nonrefundable so that a taxpayer shall not claim a credit amount under this section that reduces the taxpayer's tax liability for the tax year to less than zero.

(4) An entity described in subsection (1) may request that the department determine if a contribution to that entity qualifies for the credit under this section. The department shall make a determination and respond to a request no later than 30 days after the department receives the request.

(5) On or before July 1 of each year, the department shall report to the house of representatives committee on tax policy and the senate committee on finance the total amount of tax credits claimed under this section, section 38c, and section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, for the immediately preceding tax year.

History: Add. 1997, Act 191, Imd. Eff. Dec. 30, 1997.

******* 208.38g THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.38g Tax credit; conditions; application for project costing \$10,000,000 or less; application to Michigan economic growth authority for project costing \$10,000,000 or more; limitations; total credits; criteria; investment on more than 1 property; project completion; tax year credits

claimed; leased machinery, equipment, or fixtures; calculation of credits; carryforward provisions; qualified taxpayer; investment related to sports stadium, casino, or landfill; report; amendment of project; project as multiphase; definitions.

Sec. 38g. (1) Subject to the criteria under this section, an eligible taxpayer may claim a credit against the tax imposed by this act as determined under subsections (20) to (25); and subject to the criteria under this section, a qualified taxpayer that has a preapproval letter issued after December 31, 1999 and before January 1, 2008, provided that the project is completed not more than 5 years after the preapproval letter for the project is issued, or an assignee under subsection (17) or (18) may claim a credit that has been approved under subsection (2) or (3) against the tax imposed by this act equal to either of the following:

(a) If the total of all credits for a project is \$1,000,000.00 or less, 10% of the cost of the qualified taxpayer's eligible investment paid or accrued by the qualified taxpayer on an eligible property provided that the project does not exceed the amount stated in the preapproval letter. If eligible investment exceeds the amount of eligible investment in the preapproval letter for that project, the total of all credits for the project shall not exceed the total of all credits on the certificate of completion.

(b) If the total of all credits for a project is more than \$1,000,000.00 but \$30,000,000.00 or less and, except as provided in subsection (5)(b), the project is located in a qualified local governmental unit, a percentage as determined by the Michigan economic growth authority not to exceed 10% of the cost of the qualified taxpayer's eligible investment as determined under subsection (8) paid or accrued by the qualified taxpayer on an eligible property. If eligible investment exceeds the amount of eligible investment in the preapproval letter for that project, the total of all credits for the project shall not exceed the total of all credits on the certificate of completion.

(2) If the cost of a project will be for \$10,000,000.00 or less, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project under this subsection. An application under this subsection shall state whether the project is a multiphase project. The chairperson of the Michigan economic growth authority or his or her designee is authorized to approve an application or project under this subsection. Only the chairperson of the Michigan economic growth authority is authorized to deny an application or project under this subsection. A project shall be approved or denied not more than 45 days after receipt of the application. If the chairperson of the Michigan economic growth authority or his or her designee does not approve or deny an application within 45 days after the application is received by the Michigan economic growth authority, the application is considered approved as written. The total of all credits for all projects approved under this subsection shall not exceed \$30,000,000.00 in any calendar year. The criteria in subsection (6) shall be used when approving projects under this subsection. When approving projects under this subsection, priority shall be given to projects on a facility. The total of all credits for an approved project under this subsection shall not exceed \$1,000,000.00. A taxpayer may apply under this subsection instead of subsection (3) for approval of a project that will be for more than \$10,000,000.00 but the total of all credits for that project shall not exceed \$1,000,000.00. If the chairperson of the Michigan economic growth authority or his or her designee approves a project under this subsection, the chairperson of the Michigan economic growth authority or his or her designee shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection or subsection (3) for the same project or for another project.

(3) If the cost of a project will be for more than \$10,000,000.00 and, except as provided in subsection (5)(b), the project is located in a qualified local governmental unit, a qualified taxpayer shall apply to the Michigan economic growth authority for approval of the project. The Michigan economic growth authority shall approve or deny the project not more than 65 days after receipt of the application. A project under this subsection shall not be approved without the concurrence of the state treasurer. If the Michigan economic growth authority does not approve or deny the application within 65 days after it receives the application, the Michigan economic growth authority shall send the application to the state treasurer. The state treasurer shall approve or deny the application within 5 days after receipt of the application. If the state treasurer does not deny the application within the 5 days after receipt of the application, the application is considered approved. The Michigan economic growth authority shall approve a limited number of projects under this subsection during each calendar year as provided in subsection (5). The Michigan economic growth authority shall use the criteria in subsection (6) when approving projects under this subsection, when determining the total amount of eligible investment, and when determining the percentage of eligible investment for the project to be used to calculate a credit. The total of all credits for an approved project under this subsection shall not exceed the amount designated in the preapproval letter for that project. If the

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Michigan economic growth authority approves a project under this subsection, the Michigan economic growth authority shall issue a preapproval letter that states that the taxpayer is a qualified taxpayer; the percentage of eligible investment for the project determined by the Michigan economic growth authority for purposes of subsection (1)(b); the maximum total eligible investment for the project on which credits may be claimed and the maximum total of all credits for the project when the project is completed and a certificate of completion is issued; and the project number assigned by the Michigan economic growth authority. The Michigan economic growth authority shall send a copy of the preapproval letter to the department. If a project is denied under this subsection, a taxpayer is not prohibited from subsequently applying under this subsection or subsection (2) for the same project or for another project.

(4) If the project is on property that is functionally obsolete, the taxpayer shall include, with the application, an affidavit signed by a level 3 or level 4 assessor, that states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.

(5) The Michigan economic growth authority may approve not more than 15 projects each calendar year under subsection (3), and the following limitations apply:

(a) Of the 15 projects allowed under this subsection, the total of all credits for each project may be more than \$10,000,000.00 but \$30,000,000.00 or less for up to 3 projects.

(b) Of the 15 projects allowed under this subsection, up to 3 projects may be approved for projects that are not in a qualified local governmental unit if the property is a facility for which eligible activities are identified in a brownfield plan. For purposes of this subdivision, a facility includes a building or complex of buildings that was used by a state or federal agency and that is no longer being used for the purpose for which it was used by the state or federal agency.

(c) Of the 3 projects allowed under subdivision (a), 1 may be a project that also qualifies under subdivision (b).

(6) The Michigan economic growth authority shall review all applications for projects under subsection (3) and, if an application is approved, shall determine the maximum total of all credits for that project. Before approving a project for which the total of all credits will be more than \$10,000,000.00 but \$30,000,000.00 or less only, the Michigan economic growth authority shall determine that the project would not occur in this state without the tax credit offered under subsection (3), except that the Michigan economic growth authority may approve 1 project the construction of which began after January 1, 2000 and before January 1, 2001 without determining that the eligible investment would not occur in this state without the tax credit offered under this section. The Michigan economic growth authority shall consider the following criteria to the extent reasonably applicable to the type of project proposed when approving a project under subsection (3) and the chairperson of the Michigan economic growth authority or his or her designee shall consider the following criteria to the extent reasonably applicable to the type of project proposed when approving a project under subsection (2) or when considering an amendment to a project under subsection (31):

(a) The overall benefit to the public.

(b) The extent of reuse of vacant buildings and redevelopment of blighted property.

(c) Creation of jobs.

(d) Whether the eligible property is in an area of high unemployment.

(e) The level and extent of contamination alleviated by the qualified taxpayer's eligible activities to the extent known to the qualified taxpayer.

(f) The level of private sector contribution.

(g) The cost gap that exists between the site and a similar greenfield site as determined by the Michigan economic growth authority.

(h) If the qualified taxpayer is moving from another location in this state, whether the move will create a brownfield.

(i) Whether the financial statements of the qualified taxpayer indicate that it is financially sound and that the project is economically sound.

(j) Any other criteria that the Michigan economic growth authority or the chairperson of the Michigan economic growth authority, as applicable, considers appropriate for the determination of eligibility under subsection (2) or (3).

(7) A qualified taxpayer may apply for projects under subsection (2) or (3) for eligible investment on more than 1 eligible property in a tax year. Each project approved and each project for which a certificate of completion is issued under this section shall be for eligible investment on 1 eligible property.

(8) When a project under subsection (2) or (3) is completed, the taxpayer shall submit documentation that the project is completed, an accounting of the cost of the project, the eligible investment of each taxpayer if there is more than 1 taxpayer eligible for a credit for the project, and, if the taxpayer is not the owner or lessee of the

eligible property on which the eligible investment was made at the time the project is completed, that the taxpayer was the owner or lessee of that eligible property when all eligible investment of the taxpayer was made. The chairperson of the Michigan economic growth authority or his or her designee, for projects approved under subsection (2), or the Michigan economic growth authority, for projects approved under subsection (3), shall verify that the project is completed. The Michigan economic growth authority shall conduct an on-site inspection as part of the verification process. When the completion of the project is verified, a certificate of completion shall be issued to each qualified taxpayer that has made eligible investment on that eligible property. The certificate of completion shall state the total amount of all credits for the project and that total shall not exceed the maximum total of all credits listed in the preapproval letter for the project under subsection (2) or (3) as applicable and shall state all of the following:

- (a) That the taxpayer is a qualified taxpayer.
- (b) The total cost of the project and the eligible investment of each qualified taxpayer.
- (c) Each qualified taxpayer's credit amount.
- (d) The qualified taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.
- (e) The project number.
- (f) For a project approved under subsection (3) for which the total of all credits is more than \$10,000,000.00 but \$30,000,000.00 or less, the total of all credits and the schedule on which the annual credit amount shall be claimed by the qualified taxpayer.
- (g) For a multiphase project under subsection (32), the amount of each credit assigned and the amount of all credits claimed in each tax year before the year in which the project is completed.
- (9) Except as otherwise provided in this section, qualified taxpayers shall claim credits under subsections (2) and (3) in the tax year in which the certificate of completion is issued. For a project approved under subsection (3) for which the total of all credits is more than \$10,000,000.00 but \$30,000,000.00 or less, the qualified taxpayer shall claim 10% of its approved credit each year for 10 years. A credit assigned based on a multiphase project shall be claimed in the year in which the credit is assigned.
- (10) The cost of eligible investment for leased machinery, equipment, or fixtures is the cost of that property had the property been purchased minus the lessor's estimate, made at the time the lease is entered into, of the market value the property will have at the end of the lease. A credit for property described in this subsection is allowed only if the cost of that property had the property been purchased and the lessor's estimate of the market value at the end of the lease are provided to the Michigan economic growth authority.
- (11) For credits under subsections (2) and (3), credits claimed by a lessee of eligible property are subject to the total of all credits limitation under this section.
- (12) Each qualified taxpayer and assignee under subsection (17) or (18) that claims a credit under subsection (1)(a) or (b) shall attach a copy of the certificate of completion and, if the credit was assigned, a copy of the assignment form provided for under this section to the annual return filed under this act on which the credit under subsection (2) or (3) is claimed. An assignee of a credit based on a multiphase project shall attach a copy of the assignment form provided for under this section and the component completion certificate provided for in subsection (32) to the annual return filed under this act on which the credit is claimed but is not required to file a copy of a certificate of completion.
- (13) Except as otherwise provided in this subsection or subsection (15), (17), (19), or (32), a credit under subsection (2) or (3) shall be claimed in the tax year in which the certificate of completion is issued to the qualified taxpayer. For a project described in subsection (8)(f) for which a schedule for claiming annual credit amounts is designated on the certificate of completion by the Michigan economic growth authority, the annual credit amount shall be claimed in the tax year specified on the certificate of completion.
- (14) The credits approved under this section shall be calculated after application of all other credits allowed under this act. The credits under subsections (2) and (3) shall be calculated before the calculation of credits under subsections (20) to (25) and before the credits under sections 37c and 37d.
- (15) If the credit allowed under subsection (2) or (3) for the tax year and any unused carryforward of the credit allowed under subsection (2) or (3) exceed the qualified taxpayer's or assignee's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. Except as otherwise provided in this subsection, the maximum time allowed under the carryforward provisions under this subsection begins with the tax year in which the certificate of completion is issued to the qualified taxpayer. If the qualified taxpayer assigns all or any portion of its credit approved under subsection (2) or (3), the maximum time allowed under the

carryforward provisions for an assignee begins to run with the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. The maximum time allowed under the carryforward provisions for an annual credit amount for a credit allowed under subsection (3) begins to run in the tax year for which the annual credit amount is designated on the certificate of completion issued under this section.

(16) If a project or credit under subsection (2) or (3) is for the addition of personal property, if the cost of that personal property is used to calculate a credit under subsection (2) or (3), and if the personal property is sold or disposed of or transferred from eligible property to any other location, the qualified taxpayer that sold, disposed of, or transferred the personal property shall add the same percentage as determined pursuant to subsection (1) of the federal basis of the personal property used for determining gain or loss as of the date of the sale, disposition, or transfer to the qualified taxpayer's tax liability after application of all credits under this act for the tax year in which the sale, disposition, or transfer occurs. If a qualified taxpayer has an unused carryforward of a credit under subsection (2) or (3), the amount otherwise added under this subsection to the qualified taxpayer's tax liability may instead be used to reduce the qualified taxpayer's carryforward under subsection (15).

(17) For credits under subsections (2) and (3) and except as otherwise provided in this subsection, if a qualified taxpayer pays or accrues eligible investment on or to an eligible property that is leased for a minimum term of 10 years or sold to another taxpayer for use in a business activity, the qualified taxpayer may assign all or a portion of the credit based on that eligible investment to the lessee or purchaser of that eligible property. A credit assignment under this subsection shall only be made to a taxpayer that when the assignment is complete will be a qualified taxpayer. All credit assignments under this subsection are irrevocable and, except for a credit based on a multiphase project, shall be made in the tax year in which the certificate of completion is issued, unless the assignee is an unknown lessee. If a qualified taxpayer wishes to assign all or a portion of its credit to a lessee but the lessee is unknown in the tax year in which the certificate of completion is issued, the qualified taxpayer may delay claiming and assigning the credit until the first tax year in which the lessee is known. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. Except as otherwise provided in this subsection, if the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which the certificate of completion is issued or for a credit assigned and claimed for a multiphase project before a certificate of completion is issued, the taxpayer shall claim the credit in the year in which the credit is assigned. If a qualified taxpayer assigns all or a portion of the credit and the eligible property is leased to more than 1 taxpayer, the qualified taxpayer shall determine the amount of credit assigned to each lessee. A lessee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. A purchaser may subsequently assign a credit or any portion of a credit assigned to the purchaser under this subsection to a lessee of the eligible property. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The qualified taxpayer shall send a copy of the completed assignment form to the Michigan economic growth authority in the tax year in which the assignment is made. The assignee shall attach a copy of the completed assignment form to its annual return required to be filed under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. In addition to all other procedures under this subsection, the following apply if the total of all credits for a project is more than \$10,000,000.00 but \$30,000,000.00 or less:

- (a) The credit shall be assigned based on the schedule contained in the certificate of completion.
- (b) If the qualified taxpayer assigns all or a portion of the credit amount, the qualified taxpayer shall assign the annual credit amount for each tax year separately.
- (c) More than 1 annual credit amount may be assigned to any 1 assignee and the qualified taxpayer may assign all or a portion of each annual credit amount to any assignee.
- (d) The qualified taxpayer shall not assign more than the annual credit amount for each tax year.

(18) If a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or a portion of a credit allowed under subsection (2) or (3) to its partners, members, or shareholders, based on their proportionate share of ownership of the partnership, limited liability company, or subchapter S corporation or based on an alternative method approved by the Michigan economic growth authority. A credit assignment under this subsection is irrevocable and, except for a credit assignment based on a multiphase project, shall be made in the tax year in which a certificate of completion is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. If the qualified taxpayer both claims and assigns portions of the credit, the qualified taxpayer shall claim the portion it claims in the tax year in which a certificate of completion is issued. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. The credit assignment under this subsection shall be made on a form prescribed by the Michigan economic growth authority. The qualified taxpayer shall send a copy of the

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completed assignment form to the Michigan economic growth authority in the tax year in which the assignment is made. A partner, member, or shareholder who is an assignee shall attach a copy of the completed assignment form to its annual return required under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year. In addition to all other procedures under this subsection, the following apply if the total of all credits for a project is more than \$10,000,000.00 but \$30,000,000.00 or less:

- (a) The credit shall be assigned based on the schedule contained in the certificate of completion.
- (b) If the qualified taxpayer assigns all or a portion of the credit amount, the qualified taxpayer shall assign the annual credit amount for each tax year separately.
- (c) More than 1 annual credit amount may be assigned to any 1 assignee and the qualified taxpayer may assign all or a portion of each annual credit amount to any assignee.
- (d) The qualified taxpayer shall not assign more than the annual credit amount for each tax year.

(19) A qualified taxpayer or assignee under subsection (17) or (18) shall not claim a credit under subsection (1)(a) or (b) based on eligible investment on which a credit claimed under section 38d was based.

(20) In addition to the other credits allowed under this section and sections 37c and 37d, for tax years that begin after December 31, 1999 and for a period of time not to exceed 20 years as determined by the Michigan economic growth authority, an eligible taxpayer may credit against the tax imposed by section 31 the amount certified each year by the Michigan economic growth authority that is 1 of the following:

(a) For an eligible business under section 8(5)(a) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount that is not more than 50% of 1 or both of the following as determined by the Michigan economic growth authority:

(i) An amount determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not exceed the payroll of the eligible taxpayer attributable to employees who perform retained jobs multiplied by the tax rate for the tax year.

(ii) The tax liability attributable to the eligible taxpayer's business activity multiplied by a fraction the numerator of which is the ratio of the value of new capital investment to all of the taxpayer's property located in this state plus the ratio of the taxpayer's payroll attributable to retained jobs to all of the taxpayer's payroll in this state and the denominator of which is 2.

(b) For an eligible business under section 8(5)(b) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount that is not more than 1 or both of the following as determined by the Michigan economic growth authority:

(i) An amount determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, that does not exceed the payroll of the eligible taxpayer attributable to employees who perform retained jobs multiplied by the tax rate for the tax year.

(ii) The tax liability attributable to eligible taxpayer's business activity multiplied by a fraction the numerator of which is the ratio of the value of capital investment to all of the taxpayer's property located in this state plus the ratio of the taxpayer's payroll attributable to retained jobs to all of the taxpayer's payroll in this state and the denominator of which is 2.

(21) An eligible taxpayer shall not claim a credit under subsection (20) unless the Michigan economic growth authority has issued a certificate under section 9 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.809, to the taxpayer. The eligible taxpayer shall attach the certificate to the return filed under this act on which a credit under subsection (20) is claimed.

(22) An affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall claim only 1 credit under subsection (20) for each tax year based on each written agreement whether or not a combined or consolidated return is filed.

(23) A credit shall not be claimed by a taxpayer under subsection (20) if the eligible taxpayer's initial certification under section 9 of the Michigan economic growth authority act, 1995 PA 24, MCL 207.809, is issued after December 31, 2009. If the Michigan economic growth authority or a designee of the Michigan economic growth authority requests that a taxpayer who claims the credit under subsection (20) get a statement prepared by a certified public accountant verifying that the actual number of new jobs created is the same number of new jobs used to calculate the credit under subsection (20), the taxpayer shall get the statement and attach that statement to its annual return under this act on which the credit under subsection (20) is claimed.

(24) If the credit allowed under subsection (20)(a)(ii) or (b)(ii) for the tax year and any unused carryforward of the credit allowed by subsection (20)(a)(ii) or (b)(ii) exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability

in subsequent tax years for 10 years or until used up, whichever occurs first.

(25) If the credit allowed under subsection (20)(a)(i) or (b)(i) exceeds the tax liability of the eligible taxpayer for the tax year, the excess shall be refunded to the eligible taxpayer.

(26) An eligible taxpayer that claims a credit under subsection (1)(a) or (b) is not prohibited from claiming a credit under subsection (20). However, the eligible taxpayer shall not claim a credit under both subsections (1)(a) or (b) and (20) based on the same costs.

(27) Eligible investment attributable or related to the operation of a professional sports stadium, and eligible investment that is associated or affiliated with the operation of a professional sports stadium, including, but not limited to, the operation of a parking lot or retail store, shall not be used as a basis for a credit under subsection (2) or (3). Professional sports stadium does not include a professional sports stadium that will no longer be used by a professional sports team on and after the date that an application related to that professional sports stadium is filed under subsection (2) or (3).

(28) Eligible investment attributable or related to the operation of a casino, and eligible investment that is associated or affiliated with the operation of a casino, including, but not limited to, the operation of a parking lot, hotel, motel, or retail store, shall not be used as a basis for a credit under subsection (2) or (3). As used in this subsection, "casino" means a casino regulated by this state pursuant to the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

(29) Eligible investment attributable or related to the construction of a new landfill or the expansion of an existing landfill regulated under part 115 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11501 to 324.11550, shall not be used as a basis for a credit under subsection (2) or (3).

(30) The Michigan economic growth authority annually shall prepare and submit to the house of representatives and senate committees responsible for tax policy and economic development issues a report on the credits under subsection (2). The report shall include, but is not limited to, all of the following:

(a) A listing of the projects under subsection (2) that were approved in the calendar year.

(b) The total amount of eligible investment for projects approved under subsection (2) in the calendar year.

(31) If, after a taxpayer's project has been approved and the taxpayer has received a preapproval letter but before the project is completed, the taxpayer determines that the project cannot be completed as preapproved, the taxpayer may petition the Michigan economic growth authority to amend the project. The total of eligible investment for the project as amended shall not exceed the amount allowed in the preapproval letter for that project.

(32) A project under subsection (2) may be a multiphase project but only if the project is an industrial or manufacturing project. If a project is a multiphase project, when each component of the multiphase project is completed, the taxpayer shall submit documentation that the component is complete, an accounting of the cost of the component, and the eligible investment for the component of each taxpayer eligible for a credit for the project of which the component is a part to the Michigan economic growth authority or the designee of the Michigan economic growth authority, who shall verify that the component is complete. When the completion of the component is verified, a component completion certificate shall be issued to the qualified taxpayer which shall state that the taxpayer is a qualified taxpayer, the credit amount for the component, the qualified taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer, and the project number. The taxpayer may assign all or part of the credit for a multiphase project as provided in this section after a component completion certificate for a component is issued. The qualified taxpayer may transfer ownership of or lease the completed component and assign a proportionate share of the credit for the entire project to the qualified taxpayer that is the new owner or lessee. A multiphase project shall not be divided into more than 3 components. A component is considered to be completed when a certificate of occupancy has been issued by the local municipality in which the project is located for all of the buildings or facilities that comprise the completed component and a component completion certificate is issued. A credit assigned based on a multiphase project shall be claimed by the assignee in the tax year in which the assignment is made. The total of all credits for a multiphase project shall not exceed the amount stated in the preapproval letter for the project under subsection (1)(a). If all components of a multiphase project are not completed by 10 years after the date on which the preapproval letter for the project was issued, the qualified taxpayer that received the preapproval letter for the project shall pay to the state treasurer, as a penalty, an amount equal to the sum of all credits claimed and assigned for all components of the multiphase project and no credits based on that multiphase project shall be claimed after that date by the qualified taxpayer or any assignee of the qualified taxpayer. The penalty under this subsection is subject to interest on the amount of the credit claimed or assigned determined individually for each component at the rate in section 23(2) of 1941 PA 122, MCL 205.23, beginning on the date that the credit for that component was claimed or assigned. As used in this subsection, "proportionate share" means the same percentage of the total of all credits for the project that the

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qualified investment for the completed component is of the total qualified investment stated in the preapproval letter for the entire project.

(33) As used in this section:

(a) “Annual credit amount” means the maximum amount that a qualified taxpayer is eligible to claim each tax year for a project for which the total of all credits is more than \$10,000,000.00 but \$30,000,000.00 or less, which shall be 10% of the qualified taxpayer's credit amount approved under subsection (3).

(b) “Authority” means a brownfield redevelopment authority created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(c) “Authorized business”, “full-time job”, “new capital investment”, “qualified high-technology business”, “retained jobs”, and “written agreement” mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(d) “Blighted”, “brownfield plan”, “eligible activities”, “eligible property”, “facility”, “functionally obsolete”, and “response activity” mean those terms as defined in the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(e) “Eligible investment” means demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property and the addition of machinery, equipment, and fixtures to eligible property after the date that eligible activities on that eligible property have started pursuant to a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, and after the date that the preapproval letter is issued, except that the date that the preapproval letter is issued is not a limitation for 1 project the construction of which began after January 1, 2000 and before January 1, 2001 without the Michigan economic growth authority determining that the project would not occur in this state without the tax credit offered under this section as provided in subsection (7), if the costs of the eligible investment are not otherwise reimbursed to the taxpayer or paid for on behalf of the taxpayer from any source other than the taxpayer. The addition of leased machinery, equipment, or fixtures to eligible property by a lessee of the machinery, equipment, or fixtures is eligible investment if the lease of the machinery, equipment, or fixtures has a minimum term of 10 years or is for the expected useful life of the machinery, equipment, or fixtures, and if the owner of the machinery, equipment, or fixtures is not the qualified taxpayer with regard to that machinery, equipment, or fixtures.

(f) “Eligible taxpayer” means an eligible business that meets the criteria under section 8(5) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808.

(g) “Michigan economic growth authority” means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(h) “Multiphase project” means a project for which the total of all credits is \$1,000,000.00 or less for a project approved under subsection (2) that has more than 1 component, each of which can be completed separately.

(i) “Payroll” and “tax rate” mean those terms as defined in section 37c.

(j) “Personal property” means that term as defined in section 8 of the general property tax act, 1893 PA 206, MCL 211.8, except that personal property does not include either of the following:

(i) Personal property described in section 8(h), (i), or (j) of the general property tax act, 1893 PA 206, MCL 211.8.

(ii) Buildings described in section 14(6) of the general property tax act, 1893 PA 206, MCL 211.14.

(k) “Project” means the total of all eligible investment on an eligible property or, for purposes of subsection (5)(b), all eligible investment on property not in a qualified local governmental unit that is a facility.

(l) “Qualified local governmental unit” means that term as defined in the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(m) “Qualified taxpayer” means a taxpayer that meets both of the following criteria:

(i) Owns or leases eligible property.

(ii) Certifies that, except as otherwise provided in this subparagraph, the department of environmental quality has not sued or issued a unilateral order to the taxpayer pursuant to part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, to compel response activity on or to the eligible property, or expended any state funds for response activity on or to the eligible property and demanded reimbursement for those expenditures from the qualified taxpayer. However, if the taxpayer has completed all response activity required by part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, is in compliance with any deed restriction or administrative or judicial order related to the required response activity, and has reimbursed the state for all costs incurred by the state related to the required response activity, the taxpayer meets the criteria under this subparagraph.

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(n) "Tax liability attributable to authorized business activity" means the tax liability imposed by this act after the calculation of credits provided in sections 36, 37, and 39.

History: Add. 2000, Act 143, Imd. Eff. June 6, 2000;—Am. 2002, Act 726, Imd. Eff. Dec. 30, 2002;—Am. 2003, Act 249, Imd. Eff. Dec. 29, 2003.

******* 208.39 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

******* 208.39 SUBSECTION (2) EXPIRES DECEMBER 31, 1982: See (2) of 208.39 *******

208.39 Credit for taxpayer subject to § 207.1 et seq.; credit for person eligible to file under § 208.57; expiration of subsection (2).

Sec. 39. (1) A taxpayer subject to Act No. 282 of the Public Acts of 1905, as amended, being sections 207.1 to 207.21 of the Michigan Compiled Laws, shall be allowed a credit against the tax imposed by this act for the taxable year, an amount equal to 5% of the tax imposed under Act No. 282 of the Public Acts of 1905, as amended. The credit allowed by this section shall not be in excess of the tax liability of the taxpayer under this act. Except as provided in subsection (2) this subsection shall not apply to a taxpayer who files pursuant to the provisions of section 57.

(2) A person eligible to file under section 57 who has a net operating loss for 2 or more years or has had a net operating loss for each year of operation immediately preceding the current tax year, shall be allowed a credit against the tax imposed by this act in an amount equal to the following percentage of the tax imposed under Act No. 282 of the Public Acts of 1905, as amended: 5% for the 1977 and 1978 tax year; 4% for the 1979 tax year; 3% for the 1980 tax year; 2% for the 1981 tax year; and 1% for the 1982 tax year. The credit allowed by this subsection shall not be in excess of the tax liability of the taxpayer under this act. This subsection shall expire December 31, 1982.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977.

208.39a Repealed. 1993, Act 329, Eff. Apr. 1, 1994.

Compiler's note: The repealed section pertained to employer payment of child care services for employees.

******* 208.39b THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.39b Business located and conducted within renaissance zone; allowable tax credit; definitions.

Sec. 39b. (1) Except as provided in subsection (2) and for tax years that begin after December 31, 1996, a taxpayer that is a business located and conducting business activity within a renaissance zone may claim a credit against the tax imposed by this act for the tax year to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, equal to the tax liability attributable to business activity conducted within a renaissance zone in the tax year or, for tax years that begin on or after January 1, 2003, either of the following:

(a) Except as provided in subdivision (b), for a business that first locates and begins conducting business activity within a renaissance zone after November 30, 2002, the lesser of the following:

- (i) The tax liability attributable to business activity conducted within a renaissance zone in the tax year.
- (ii) Ten percent of adjusted services performed in a designated renaissance zone.

(b) For a business that is located and conducting business activity within a renaissance zone before December 1, 2002 or a business that before December 1, 2002 has entered into a purchase agreement or lease agreement for real or personal property to be used for business activity within a renaissance zone, the greater of the following:

- (i) The amount calculated under subdivision (a)(i) or (ii), whichever is less.

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- (ii) The lesser of the following:
- (A) The amount calculated under subdivision (a)(i).
 - (B) The credit allowed under this section for the tax year beginning in 2002 plus 2% of the increase in the amount calculated under subsection (9)(a)(i) for the tax year over the amount calculated under subsection (9)(a)(i) for the tax year beginning in 2002.
- (2) Any portion of the taxpayer's tax liability that is attributable to illegal activity conducted in the renaissance zone shall not be used to calculate a credit under this section.
- (3) The credit allowed under this section continues through the tax year in which the renaissance zone designation expires.
- (4) The tax liability used to determine the credit under this section is the taxpayer's tax liability before the calculation of credits provided in sections 37c and 38b and after the calculation of all other credits under this act.
- (5) The credit allowed under this section shall not exceed the tax liability of the taxpayer for the tax year.
- (6) A taxpayer that claims a credit under this section shall not employ, pay a speaker fee to, or provide any remuneration, compensation, or consideration to any person employed by the state, the state administrative board created in 1921 PA 2, MCL 17.1 to 17.3, or the renaissance zone review board created in 1996 PA 376, MCL 125.2681 to 125.2696, whose employment relates or related in any way to the authorization or enforcement of the credit allowed under this section for any year in which the taxpayer claims a credit under this section and for the 3 years after the last year that a credit is claimed.
- (7) To be eligible for the credit allowed under this section, an otherwise qualified taxpayer shall file an annual return under this act.
- (8) Any portion of the taxpayer's tax liability that is attributable to business activity related to the operation of a casino, and business activity that is associated or affiliated with the operation of a casino including, but not limited to, the operation of a parking lot, hotel, motel, or retail store, shall not be used to calculate a credit under this section. As used in this subsection, "casino" means a casino regulated by this state pursuant to the Michigan gaming control and revenue act, Initiated Law of 1996, MCL 432.201 to 432.226.
- (9) As used in this section:
- (a) "Adjusted services performed in a designated renaissance zone" means either of the following:
 - (i) Except as provided in subparagraph (ii), the sum of the taxpayer's payroll for services performed in a designated renaissance zone plus an amount equal to the amount added pursuant to section 9(4)(c) for the tax year for property exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for new property, in the immediately following tax year.
 - (ii) For a partnership, limited liability company, S corporation, or individual, the amount determined under subparagraph (i) plus the product of the following as related to the taxpayer if greater than zero:
 - (A) Business income.
 - (B) The apportionment factor as determined under chapter 3.
 - (C) The renaissance zone business activity factor.
 - (b) "New property" means property that has not been subject to, or exempt from, the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and has not been subject to, or exempt from, ad valorem property taxes levied in another state, except that receiving an exemption as inventory property does not disqualify property.
 - (c) "Renaissance zone" means that term as defined in 1996 PA 376, MCL 125.2681 to 125.2696.
 - (d) "Payroll" means total salaries and wages before deducting any personal or dependency exemptions.
 - (e) "Renaissance zone business activity factor" means a fraction, the numerator of which is the ratio of the average value of the taxpayer's property located in a designated renaissance zone to the average value of the taxpayer's property in this state plus the ratio of the taxpayer's payroll for services performed in a designated renaissance zone to all of the taxpayer's payroll in this state and the denominator of which is 2.
 - (f) "Tax liability attributable to business activity conducted within a renaissance zone" means the taxpayer's tax liability multiplied by the renaissance zone business activity factor.

History: Add. 1996, Act 441, Imd. Eff. Dec. 19, 1996;—Am. 2002, Act 622, Imd. Eff. Dec. 23, 2002.

******* 208.39c THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.39c Rehabilitation of historic resource; tax credit; plan.

Sec. 39c. (1) A qualified taxpayer with a rehabilitation plan certified after December 31, 1998 may credit against the tax imposed by this act the amount determined pursuant to subsection (2) for the qualified expenditures for the rehabilitation of a historic resource pursuant to the rehabilitation plan in the year in which the certification of completed rehabilitation of the historic resource is issued provided that the certification of completed rehabilitation was issued not more than 5 years after the rehabilitation plan was certified by the Michigan historical center.

(2) The credit allowed under this section shall be 25% of the qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, 25% of the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code, subject to both of the following:

(a) A taxpayer with qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code may not claim a credit under this section for those qualified expenditures unless the taxpayer has claimed and received a credit for those qualified expenditures under section 47(a)(2) of the internal revenue code.

(b) A credit under this section shall be reduced by the amount of a credit received by the taxpayer for the same qualified expenditures under section 47(a)(2) of the internal revenue code.

(3) To be eligible for the credit under this section, the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(i) The historic resource contributes to the significance of the historic district in which it is located.

(ii) Both the rehabilitation plan and completed rehabilitation of the historic resource meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 C.F.R. part 67.

(iii) All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the property.

(b) The taxpayer has received certification from the national park service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the credit allowed under section 47(a)(2) of the internal revenue code.

(4) If a qualified taxpayer is eligible for the credit allowed under section 47(a)(2) of the internal revenue code, the qualified taxpayer shall file for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code. If the qualified taxpayer has previously filed for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code, additional filing for the credit allowed under this section is not required.

(5) The center may inspect a historic resource at any time during the rehabilitation process and may revoke certification of completed rehabilitation if the rehabilitation was not undertaken as represented in the rehabilitation plan or if unapproved alterations to the completed rehabilitation are made during the 5 years after the tax year in which the credit was claimed. The center shall promptly notify the department of a revocation.

(6) Qualified expenditures for the rehabilitation of a historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

(a) The resource is 1 of the following during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) Individually listed on the national register of historic places or state register of historic sites.

(ii) A contributing resource located within a historic district listed on the national register of historic places or the state register of historic sites.

(iii) A contributing resource located within a historic district designated by a local unit pursuant to an ordinance adopted under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(b) The resource meets 1 of the following criteria during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) The historic resource is located in a designated historic district in a local unit of government with an existing ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(ii) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and has a population of less than 5,000.

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(iii) The historic resource is located in an unincorporated local unit of government.

(7) If a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or any portion of a credit allowed under this section to its partners, members, or shareholders, based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by the department. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned to the partner, member, or shareholder under this subsection. A credit amount assigned under this subsection may be claimed against the partner's, member's, or shareholder's tax liability under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. A credit assignment under this subsection shall be made on a form prescribed by the department. The qualified taxpayer and assignees shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made and attach a copy of the completed assignment form to the annual return required to be filed under this act for that tax year.

(8) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first.

(9) If the taxpayer sells a historic resource for which a credit under this section was claimed less than 5 years after the year in which the credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the sale:

- (a) If the sale is less than 1 year after the year in which the credit was claimed, 100%.
- (b) If the sale is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.
- (c) If the sale is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.
- (d) If the sale is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.
- (e) If the sale is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.
- (f) If the sale is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(10) If a certification of completed rehabilitation is revoked under subsection (5) less than 5 years after the year in which a credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the revocation:

- (a) If the revocation is less than 1 year after the year in which the credit was claimed, 100%.
- (b) If the revocation is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.
- (c) If the revocation is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.
- (d) If the revocation is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.
- (e) If the revocation is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.
- (f) If the revocation is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(11) The department of history, arts, and libraries through the Michigan historical center may impose a fee to cover the administrative cost of implementing the program under this section.

(12) The qualified taxpayer shall attach all of the following to the qualified taxpayer's annual return required under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, if applicable, on which the credit is claimed:

- (a) Certification of completed rehabilitation.
- (b) Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit under this section.
- (c) A completed assignment form if the qualified taxpayer has assigned any portion of a credit allowed under this section to a partner, member, or shareholder, or if the taxpayer is an assignee of any portion of a credit allowed under this section.

(13) The department of history, arts, and libraries shall promulgate rules to implement this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(14) The total of the credits claimed under this section and section 266 of the income tax act of 1967, 1967 PA 281, MCL 206.266, for a rehabilitation project shall not exceed 25% of the total qualified expenditures eligible for the credit under this section for that rehabilitation project.

(15) The department of history, arts, and libraries through the Michigan historical center shall report all of the

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following to the legislature annually for the immediately preceding state fiscal year:

- (a) The fee schedule used by the center and the total amount of fees collected.
- (b) A description of each rehabilitation project certified.
- (c) The location of each new and ongoing rehabilitation project.

(16) As used in this section:

(a) “Contributing resource” means a historic resource that contributes to the significance of the historic district in which it is located.

(b) “Historic district” means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

(c) “Historic resource” means a publicly or privately owned historic building, structure, site, object, feature, or open space located within a historic district designated by the national register of historic places, the state register of historic sites, or a local unit acting under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215; or that is individually listed on the state register of historic sites or national register of historic places and includes all of the following:

(i) An owner-occupied personal residence or a historic resource located within the property boundaries of that personal residence.

(ii) An income-producing commercial, industrial, or residential resource or a historic resource located within the property boundaries of that resource.

(iii) A resource owned by a governmental body, nonprofit organization, or tax-exempt entity that is used primarily by a taxpayer lessee in a trade or business unrelated to the governmental body, nonprofit organization, or tax-exempt entity and that is subject to tax under this act.

(iv) A resource that is occupied or utilized by a governmental body, nonprofit organization, or tax-exempt entity pursuant to a long-term lease or lease with option to buy agreement.

(v) Any other resource that could benefit from rehabilitation.

(d) “Local unit” means a county, city, village, or township.

(e) “Long-term lease” means a lease term of at least 27.5 years for a residential resource or at least 31.5 years for a nonresidential resource.

(f) “Michigan historical center” or “center” means the state historic preservation office of the Michigan historical center of the department of history, arts, and libraries or its successor agency.

(g) “Open space” means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

(h) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(i) “Qualified expenditures” means capital expenditures that qualify for a rehabilitation credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code that were paid not more than 5 years after the certification of the rehabilitation plan that included those expenditures was approved by the center, and that were paid after December 31, 1998 for the rehabilitation of a historic resource. Qualified expenditures do not include capital expenditures for nonhistoric additions to a historic resource except an addition that is required by state or federal regulations that relate to historic preservation, safety, or accessibility.

(j) “Qualified taxpayer” means a person that is an assignee under subsection (7) or either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the state equalized valuation of the property. If the historic resource to be rehabilitated is a portion of a historic or nonhistoric resource, the state equalized valuation of only that portion of the property shall be used for purposes of this subdivision. If the assessor for the local tax collecting unit in which the historic resource is located determines the state equalized valuation of that portion, that assessor's determination shall be used for purposes of this subdivision. If the assessor does not determine that state equalized valuation of that portion, qualified expenditures, for purposes of this subdivision, shall be equal to or greater than 5% of the appraised value as determined by a certified appraiser. If the historic resource to be rehabilitated does not have a state equalized valuation, qualified expenditures for purposes of this subdivision shall be equal to or greater than 5% of the appraised value of the resource as determined by a certified appraiser.

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(k) "Rehabilitation plan" means a plan for the rehabilitation of a historic resource that meets the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitation of historic buildings under 36 C.F.R. part 67.

History: Add. 1998, Act 534, Imd. Eff. Jan. 19, 1999;—Am. 1999, Act 213, Imd. Eff. Dec. 28, 1999;—Am. 2001, Act 69, Imd. Eff. July 24, 2001.

Administrative rules: R 206.151 et seq. of the Michigan Administrative Code.

******* 208.39d THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.39d Low-grade hematite consumed in industrial or manufacturing process; tax credit.

Sec. 39d. (1) For tax years that begin after December 31, 2000, a taxpayer may claim a credit against the tax imposed by this act equal to \$1.00 per long ton of qualified low-grade hematite consumed in an industrial or manufacturing process that is the business activity of the taxpayer.

(2) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 5 tax years or until the excess credit is used up, whichever occurs first.

(3) The credit under this section shall be based on low-grade hematite consumed on and after January 1, 2000.

(4) As used in this section:

(a) "Consumed in an industrial or manufacturing process" means a process in which low-grade hematite is used as a raw material in the production of pig iron or steel.

(b) "Low-grade hematite" means any hematitic iron formation that is not of sufficient quality in its original mineral state to be mined and shipped for the production of pig iron or steel without first being drilled, blasted, crushed, and ground very fine to liberate the iron minerals and for which additional beneficiation and agglomeration are required to produce a product of sufficient quality to be used in the production of pig iron or steel.

(c) "Qualified low-grade hematite" means pellets produced from low-grade hematitic iron ore mined in the United States.

History: Add. 2001, Act 249, Imd. Eff. Jan. 8, 2002.

******* 208.39e THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.39e Tax credit; certification as eligible taxpayer under Michigan next energy authority act; definitions.

Sec. 39e. (1) A taxpayer may claim a credit against the tax imposed by this act for 1 or more of the following as applicable:

(a) The credit allowed under subsection (2).

(b) The credit allowed under subsection (6).

(2) For tax years that begin after December 31, 2002, a taxpayer that is certified under the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827, as an eligible taxpayer may claim a nonrefundable credit for the tax year equal to the amount determined under subdivision (a) or (b), whichever is less:

(a) The amount by which the taxpayer's tax liability attributable to qualified business activity for the tax year exceeds the taxpayer's baseline tax liability attributable to qualified business activity.

(b) For tax years that begin after December 31, 2002, 10% of the amount by which the taxpayer's adjusted qualified business activity performed in this state outside of a renaissance zone for the tax year exceeds the taxpayer's adjusted qualified business activity performed in this state outside of a renaissance zone for the 2001 tax year.

(3) For any tax year in which the eligible taxpayer's tax liability attributable to qualified business activity for the tax year does not exceed the taxpayer's baseline tax liability attributable to qualified business activity, the eligible taxpayer shall not claim the credit allowed under subsection (2).

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(4) An affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall not take the credit allowed under subsection (2) unless the qualified business activity of the group or entities is consolidated.

(5) A taxpayer that claims a credit under subsection (2) shall attach a copy of each of the following as issued pursuant to the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827, to the annual return required under this act for each tax year in which the taxpayer claims the credit allowed under subsection (2):

(a) The proof of certification that the taxpayer is an eligible taxpayer for the tax year.

(b) The proof of certification of the taxpayer's tax liability attributable to qualified business activity for the tax year.

(c) The proof of certification of the taxpayer's baseline tax liability attributable to qualified business activity.

(6) For tax years that begin after December 31, 2002, a taxpayer that is a qualified alternative energy entity may claim a credit for the taxpayer's qualified payroll amount. A taxpayer shall claim the credit under this subsection after all allowable nonrefundable credits under this act.

(7) If the credit allowed under subsection (6) exceeds the tax liability of the taxpayer for the tax year, that portion of the credit that exceeds the tax liability shall be refunded.

(8) Notwithstanding any other provision of this act and for tax years that begin after December 31, 2002, a person whose apportioned or allocated gross receipts are less than \$350,000.00 for the tax year need not file a return or pay the tax as provided under this act.

(9) As used in this section:

(a) "Adjusted qualified business activity performed in this state outside of a renaissance zone" means either of the following:

(i) Except as provided in subparagraph (ii), the taxpayer's payroll for qualified business activity performed in this state outside of a renaissance zone.

(ii) For a partnership, limited liability company, S corporation, or individual, the amount determined under subparagraph (i) plus the product of the following as related to the taxpayer:

(A) Business income.

(B) The apportionment factor as determined under chapter 3.

(C) The alternative energy business activity factor.

(b) "Alternative energy business activity factor" means a fraction the numerator of which is the ratio of the value of the taxpayer's property used for qualified business activity and located in this state outside of a renaissance zone for the year for which the factor is being calculated to the value of all of the taxpayer's property located in this state for that year plus the ratio of the taxpayer's payroll for qualified business activity performed in this state outside of a renaissance zone for that year to all of the taxpayer's payroll in this state for that year and the denominator of which is 2.

(c) "Alternative energy marine propulsion system", "alternative energy system", "alternative energy vehicle", and "alternative energy technology" mean those terms as defined in the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

(d) "Alternative energy zone" means a renaissance zone designated as an alternative energy zone by the board of the Michigan strategic fund under section 8a of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2688a.

(e) "Baseline tax liability attributable to qualified business activity" means the taxpayer's tax liability for the 2001 tax year multiplied by the taxpayer's alternative energy business activity factor for the 2001 tax year. A taxpayer with a 2001 tax year of less than 12 months shall annualize the amount calculated under this subdivision as necessary to determine baseline tax liability attributable to qualified business activity that reflects a 12-month period.

(f) "Eligible taxpayer" means a taxpayer that has proof of certification of qualified business activity under the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

(g) "Payroll" means total salaries and wages before deducting any personal or dependency exemptions.

(h) "Qualified alternative energy entity" means a taxpayer located in an alternative energy zone.

(i) "Qualified business activity" means research, development, or manufacturing of an alternative energy marine propulsion system, an alternative energy system, an alternative energy vehicle, alternative energy technology, or renewable fuel.

(j) "Qualified employee" means an individual who is employed by a qualified alternative energy entity, whose job responsibilities are related to the research, development, or manufacturing activities of the qualified alternative energy entity, and whose regular place of employment is within an alternative energy zone.

(k) "Qualified payroll amount" means an amount equal to payroll of the qualified alternative energy entity attributable to all qualified employees in the tax year of the qualified alternative energy entity for which the credit under subsection (6) is being claimed, multiplied by the tax rate for that tax year.

(l) "Renaissance zone" means a renaissance zone designated under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.

(m) "Renewable fuel" means 1 or more of the following:

(i) Biodiesel or biodiesel blends containing at least 20% biodiesel. As used in this subparagraph, "biodiesel" means a diesel fuel substitute consisting of methyl or ethyl esters produced from the transesterification of animal or vegetable fats with methanol or ethanol.

(ii) Biomass. As used in this subparagraph, "biomass" means residues from the wood and paper products industries, residues from food production and processing, trees and grasses grown specifically to be used as energy crops, and gaseous fuels produced from solid biomass, animal wastes, municipal waste, or landfills.

(n) "Tax liability attributable to qualified business activity" means the taxpayer's tax liability multiplied by the taxpayer's alternative energy business activity factor for the tax year.

(o) "Tax rate" means the rate imposed under sections 51, 51d, and 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51, 206.51d, and 206.51e, annualized as necessary, for the tax year in which the qualified alternative energy entity claims a credit under subsection (6).

History: Add. 2002, Act 531, Imd. Eff. July 25, 2002;—Am. 2002, Act 622, Imd. Eff. Dec. 23, 2002.

******* 208.39f THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.39f Tax credit; taxpayer pharmaceutical based business activity.

Sec. 39f. (1) For tax years that begin after December 31, 2002, an eligible taxpayer may claim a credit against the tax imposed by this act equal to 6-1/2% of the excess of qualified research expenses paid in the tax year that relate to the eligible taxpayer's pharmaceutical based business activity in this state over the average qualified research expenses that relate to the eligible taxpayer's pharmaceutical based business activity in this state paid during the 3 immediately preceding tax years.

(2) The amount of a credit for any tax year under subsection (1) shall not exceed 200% of the eligible taxpayer's average qualified research expenses that relate to the taxpayer's pharmaceutical based business activity in this state for the 3 immediately preceding tax years.

(3) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded but may be carried forward as an offset to the tax liability in subsequent tax years for 7 tax years or until the excess credit is used up, whichever occurs first.

(4) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine the credit allowed under this section on a consolidated basis.

(5) An eligible taxpayer may assign all or a portion of a credit allowed under this section. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which qualified research expenses are paid. An eligible taxpayer may claim a portion of the credit and assign a portion of the remaining credit amount. However, the eligible taxpayer shall not assign in any tax year more than 40% of the total amount of the credit allowed for that year. If the eligible taxpayer both claims and assigns portions of the credit, the eligible taxpayer shall claim the portion it claims in the tax year in which the qualified research expenses are paid. An assignee shall not subsequently assign a credit or any portion of a credit assigned under this subsection. The credit assignment under this subsection shall be made on a form prescribed by the department. The eligible taxpayer shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made. The assignee shall attach a copy of the completed assignment form to its annual return required under this act, for the tax year in which the assignment is made and the assignee first claims a credit, which shall be the same tax year.

(6) The total of all credits allowed under this section shall not exceed \$10,000,000.00 for any 1 tax year.

(7) As used in this section:

(a) "Eligible taxpayer" means a company that meets all of the following criteria within 18 months after the

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effective date of the amendatory act that added this section:

- (i) Is engaged primarily in manufacturing, research and development, and sale of pharmaceuticals.
 - (ii) Has not less than 8,500 employees located in this state. The primary places of employment for all the employees required under this subparagraph shall be located within a 100-mile radius of each other.
 - (iii) Of the total number of employees located in this state, has not less than 5,000 engaged primarily in research and development of pharmaceuticals.
- (b) "Qualified research expenses" means that term as defined in section 41 of the internal revenue code.
- History:** Add. 2002, Act 588, Imd. Eff. Oct. 16, 2002.

CHAPTER 3

******* 208.40 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.40 Allocation of tax base; business activities confined solely to state.

Sec. 40. In the case of a taxpayer whose business activities are confined solely to this state, the entire tax base of the taxpayer shall be allocated to this state except as provided in section 56.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.41 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.41 Apportionment of tax base; business activities taxable within and without state.

Sec. 41. A taxpayer whose business activities are taxable both within and without this state, shall apportion his tax base as provided in this chapter.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.42 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.42 Conditions to taxpayer being taxable in another state.

Sec. 42. For purposes of apportionment of the tax base from business activities under this act, a taxpayer is taxable in another state if, (a) in that state he is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax, a tax of the type imposed under this act, or (b) that state has jurisdiction to subject the taxpayer to 1 or more of the taxes regardless of whether, in fact, the state does or does not.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.45 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.45 Apportionment of tax base to state.

Sec. 45. (1) For tax years beginning before January 1, 1991, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a fraction, the numerator of which is the property factor plus the payroll

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factor plus the sales factor, and the denominator of which is 3.

(2) For tax years beginning after December 31, 1990 and before January 1, 1993, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 30%.
- (b) The payroll factor multiplied by 30%.
- (c) The sales factor multiplied by 40%.

(3) Subsection (2) does not apply for a tax year in which a deduction is not allowed under section 23(c).

(4) For tax years beginning after December 31, 1992 and before January 1, 1997 and for tax years beginning after December 31, 1996 and before January 1, 1998 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 25%.
- (b) The payroll factor multiplied by 25%.
- (c) The sales factor multiplied by 50%.

(5) Except as provided in subsections (4) and (7) and for tax years beginning after December 31, 1996 and before January 1, 1999, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 10%.
- (b) The payroll factor multiplied by 10%.
- (c) The sales factor multiplied by 80%.

(6) For tax years beginning after December 31, 1998, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state as provided in section 45a.

(7) For tax years beginning after December 31, 1997 and before January 1, 1999 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 20%.
- (b) The payroll factor multiplied by 20%.
- (c) The sales factor multiplied by 60%.

(8) For purposes of this section, a taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December 31 of that year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1995, Act 283, Imd. Eff. Jan. 9, 1996.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

******* 208.45a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.45a Apportionment of tax base.

Sec. 45a. (1) Except as provided in subsection (2) and for tax years beginning after December 31, 1998, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 5%.

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- (b) The payroll factor multiplied by 5%.
 - (c) The sales factor multiplied by 90%.
 - (2) For tax years beginning after December 31, 1998 and before January 1, 2000 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:
 - (a) The property factor multiplied by 15%.
 - (b) The payroll factor multiplied by 15%.
 - (c) The sales factor multiplied by 70%.
 - (3) For purposes of this section, a taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December 31 of that year.
- History:** Add. 1995, Act 282, Imd. Eff. Jan. 9, 1996;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

******* 208.46 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.46 Property factor.

- Sec. 46. (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in this state during the tax year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented during the tax year.
- (2) For a foreign person, the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in this state during the tax year by the taxpayer and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented in the United States during the tax year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

******* 208.47 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.47 Valuation of property owned or rented by taxpayer; net annual rental rate.

Sec. 47. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.48 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.48 Determining average value of property; periodic averaging of values.

Sec. 48. The average value of property shall be determined by averaging the values at the beginning and ending of the tax year, but the commissioner may require the periodic averaging of values during the tax year if reasonably required to reflect properly the average value of the taxpayer's property.

History: 1975, Act 228, Eff. Jan. 1, 1976.

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***** 208.49 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.49 Payroll factor; "wages" defined.

Sec. 49. (1) The payroll factor is a fraction, the numerator of which is the total wages paid in this state during the tax year by the taxpayer and the denominator of which is the total wages paid everywhere during the tax year by the taxpayer. For the purposes of this chapter only, "wages" means all wages, salaries, fees, bonuses, commissions, paid in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayer and includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code.

(2) For a foreign person, the payroll factor is a fraction, the numerator of which is the total wages paid for services performed in this state during the tax year by the taxpayer and the denominator of which is the total wages paid for services performed in the United States during the tax year by the taxpayer.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

***** 208.50 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.50 Wages paid in state; conditions.

Sec. 50. Wages are paid in this state if:

- (a) The individual's service is performed entirely within the state.
- (b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state.
- (c) Some of the service is performed in the state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is in the state; or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

History: 1975, Act 228, Eff. Jan. 1, 1976.

***** 208.51 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *****

208.51 Sales factor.

Sec. 51. (1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

(2) For a foreign person, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer in the United States during the tax year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to

the State and the intrastate values of the enterprise.”

******* 208.52 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.52 Sales of tangible personal property in state; circumstances.

Sec. 52. Sales of tangible personal property are in this state in any of the following circumstances:

(a) For tax years beginning before January 1, 1998, the property is shipped or delivered to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sales.

(b) For tax years beginning on and after January 1, 1998, the property is shipped or delivered to any purchaser within this state regardless of the free on board point or other conditions of the sales.

(c) For tax years beginning before January 1, 1998, the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government, or the taxpayer is not taxable in the state of the purchaser. For the purposes of this subdivision only, “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or political subdivision thereof.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1998, Act 225, Imd. Eff. July 1, 1998.

******* 208.53 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.53 Sales other than of tangible personal property in state; conditions.

Sec. 53. Sales, other than sales of tangible personal property, are in this state if:

(a) The business activity is performed in this state.

(b) The business activity is performed both in and outside this state and, based on costs of performance, a greater proportion of the business activity is performed in this state than is performed outside this state.

(c) Receipts derived from services performed for planning, design, or construction activities within this state shall be deemed Michigan receipts.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.54 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.54 Calculation of sales factor by spun off corporation.

Sec. 54. (1) Notwithstanding sections 51 and 52, a spun off corporation may elect to calculate its sales factor under this section for a period of 5 years if the following criteria under subdivisions (a), (b), and (c) are met and for an additional 2 years following the 5 years if all of the following criteria under this subsection are met:

(a) The spun off corporation was included in a combined or consolidated return under this act for the tax year immediately preceding the restructuring transaction.

(b) As a result of the restructuring transaction that occurred on or after January 1, 1999, both of the following apply:

(i) The spun off corporation ceased to be included in the combined or consolidated annual return under this act described in subsection (1)(a).

(ii) Without regard to this section, the spun off corporation would have had an increased tax liability under this act for the tax year in which the election under this section is made.

(c) On or before the due date for filing the spun off corporation's first annual return under this act following the restructuring transaction, the spun off corporation shall request, in writing, approval from the state treasurer for the election provided under this section. The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:

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- (i) A statement that the spun off corporation qualifies for the election under this section.
- (ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.
- (iii) A commitment by the spun off corporation to invest at least \$500,000,000.00 of capital investment in this state within 5 years. The 5 years under this subparagraph shall commence with the first tax year following the tax year in which the restructuring transaction was completed.
- (d) Prior to the end of the sixth year following the restructuring transaction and if the spun off corporation is not required to file amended returns under subsection (3), the spun off corporation shall request, in writing, approval from the state treasurer for the election provided under this section. The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:
 - (i) A statement that the spun off corporation qualifies for the election under this section.
 - (ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.
 - (iii) A commitment by the spun off corporation to invest at least \$200,000,000.00 of capital investment in this state within the next 2 years. The 2 years under this subparagraph shall commence with the sixth tax year following the tax year in which the restructuring transaction was completed.
- (2) A spun off corporation qualified under subsection (1) and that makes an election and is approved under subsection (1) calculates its sales factor under sections 51 and 52 subject to both of the following:
 - (a) A purchaser in this state under section 52 does not include a person who purchases from a seller that was included in the purchaser's combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return under this act.
 - (b) Total sales under section 51 do not include sales to a purchaser that was a member of a Michigan affiliated group that had included the seller in the filing of a combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to include the seller.
- (3) At the end of the fifth year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section has failed to pay or accrue the amount of capital investment required under subsection (1)(c), the spun off corporation shall be required to file amended annual returns under this act for each of the years the spun off corporation calculated its sales factor under this section regardless of the applicable statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.
- (4) At the end of the seventh tax year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section has failed to pay or accrue the capital investment required under subsection (1)(d), the spun off corporation shall be required to file amended annual returns under this act for the sixth and seventh tax years following the restructuring transaction and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.
- (5) As used in this section:
 - (a) "Spun off corporation" means an entity treated as a controlled corporation under section 355 of the internal revenue code. Controlled corporation includes a corporate subsidiary created for the purpose of a restructuring transaction, a limited liability company, or an operational unit or division with business activities that were previously carried out as a part of the distributing corporation.
 - (b) "Restructuring transaction" means a tax free distribution under section 355 of the internal revenue code and includes tax free transactions under section 355 that are commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

History: Add. 1999, Act 115, Imd. Eff. July 14, 1999.

******* 208.56 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.56 Transportation services; determination of tax base.

Sec. 56. The tax base of a taxpayer whose business activities consist of transportation services rendered either entirely within or partly within and partly without this state shall be determined under the provisions of sections 57

and 58.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.57 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

******* 208.57 SUBSECTION (3) EXPIRES DECEMBER 31, 1982: See (3) of 208.57 *******

208.57 Transportation services; tax base attributable to Michigan sources; data; computation; expiration of subsection (3).

Sec. 57. (1) In the case of a taxpayer under section 56 other than one whose activity consists of the transportation of oil or gas by pipeline, the tax base attributable to Michigan sources shall be that portion of the tax base of the taxpayer derived from transportation services wherever performed that the revenue miles of the taxpayer in Michigan bear to the revenue miles of the taxpayer everywhere. A revenue mile means the transportation for a consideration of 1 net ton in weight or 1 passenger the distance of 1 mile. The tax base attributable to Michigan sources in the case of a taxpayer engaged in the transportation both of property and of individuals, shall be that portion of the entire tax base of the taxpayer which is equal to the sum of his passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.

(2) If it is shown to the satisfaction of the commissioner that the foregoing information is not available or cannot be obtained without unreasonable expense to the taxpayer, the commissioner may use such other data which may be available and which in the opinion of the commissioner will result in an equitable allocation of the receipts to this state.

(3) The tax base attributable to this state shall be the following percentage of the tax base otherwise computed under subsection (1): 30% for the 1977, 1978, and 1979 tax years; 70% for the 1980 and 1981 tax years; and 90% for the 1982 tax year. The tax computed shall not be less than an amount equal to the 5-year average tax liability measured as a percentage of gross receipts, determined by computing the percentage that the taxpayer's liability for the taxes levied under Act No. 85 of the Public Acts of 1921, as amended, being sections 450.304 to 450.310 of the Michigan Compiled Laws, Act No. 281 of the Public Acts of 1967, as amended, being sections 206.1 to 206.532 of the Michigan Compiled Laws, Act No. 301 of the Public Acts of 1939, as amended, being sections 205.131 to 205.147 of the Michigan Compiled Laws, and the tax levied on the inventory portion of personal property under Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Michigan Compiled Laws, or Act No. 282 of the Public Acts of 1905, as amended, being sections 207.1 to 207.21 of the Michigan Compiled Laws, bears to the gross receipts of the taxpayer. The 5-year average tax liability under this subsection shall be computed and determined from the 1971 to 1975 tax years. For the tax years beginning after December 31, 1976, the percentage established for the 5-year average liability for the 1976 tax year shall be used for calculating this minimum tax. This subsection shall expire December 31, 1982.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977.

******* 208.58 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.58 Transportation of oil or gas by pipeline; tax base attributable to Michigan.

Sec. 58. (1) When the tax base is derived from the transportation of oil by pipeline, the tax base attributable to Michigan shall be the tax base of the taxpayer in the ratio that the barrel miles transported in Michigan bear to the barrel miles transported by the taxpayer everywhere.

(2) When the tax base is derived from the transportation of gas by pipeline, the tax base attributable to Michigan shall be the tax base of the taxpayer in the ratio that the 1,000 cubic feet miles transported in Michigan bear to the

1,000 cubic feet miles transported by the taxpayer everywhere.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.62 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.62 Tax base of insurer doing business within and without state.

Sec. 62. The tax base of an insurer doing business both within and without the state or partly within and without the state shall be that portion of the tax base of the taxpayer that the gross direct premiums received for insurance upon property or risk in this state, deducting premiums upon policies not taken and returned premiums on canceled policies from Michigan, bears to the gross direct premiums received for insurance upon property or risk, deducting premiums upon policies not taken and returned premiums on canceled policies everywhere.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

******* 208.65 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.65 Financial organization; tax base attributable to Michigan sources.

Sec. 65. The tax base of a financial organization attributable to Michigan sources shall be taken to be:

- (a) The entire tax base of a taxpayer whose business activities are confined solely to this state.
- (b) In the case of a taxpayer whose business activities are conducted partially within and partially without this state that portion of its tax base as its gross business in this state is to its gross business everywhere during the period covered by its return. Gross business includes the sum of:
 - (i) Fees, commissions, or other compensation for financial services.
 - (ii) Gross profits from trading in stocks, bonds, or other securities.
 - (iii) Interest charged to customers for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying the accounts.
 - (iv) Interest and dividends received.
 - (v) Any other gross income resulting from the operation as a financial organization.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.68 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.68 Election by taxpayer.

Sec. 68. (1) If the taxpayer's business activities within this state do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within this state is not in excess of \$100,000.00, the taxpayer may elect for that year to report and pay a tax on the tax base arrived at by multiplying total sales in this state for the taxable year by the ratio of the tax base, for the tax imposed by this act, to total sales as reported on the taxpayer's federal income tax return for the same taxable year.

(2) The election is not available for any taxable year for which a consolidated or combined return is filed.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.69 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.69 Apportionment as fairly representing extent of taxpayer's business activity in state;

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petition; alternative method; presumption; business domicile; filing of return or amended return not considered petition; "adjusted tax base" defined.

Sec. 69. (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the commissioner may require the following, in respect to all or a part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting.
- (b) The exclusion of 1 or more of the factors.
- (c) The inclusion of 1 or more additional factors which will fairly represent the taxpayer's business activity in this state.
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.

(2) An alternate method will be effective only if it is approved by the commissioner.

(3) The apportionment provisions of this act shall fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of the tax base such as depreciation, compensation, or income, unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business transacted in this state and leads to a grossly distorted result. A taxpayer's business activity shall be presumed to be fairly represented if the adjusted tax base computed without regard to the reduction based upon gross receipts permitted by section 31(2) is not greater than the adjusted tax base computed after application of the reduction based upon gross receipts permitted by section 31(2) or if the adjusted tax base is not greater than the adjusted tax base which would result from an apportioned tax base computed by using the apportionment formula prescribed for a corporate income tax or franchise tax in the taxpayer's business domicile. The taxpayer's business domicile is the state in which the sum of the taxpayer's payroll factor and property factor is greatest. However, if the taxpayer fails to satisfy either of these tests, the taxpayer's business activity shall not be presumed to not be fairly represented.

(4) The filing of a return or an amended return shall not be considered a petition for the purposes of subsection (1).

(5) As used in this section, "adjusted tax base" means that term as defined in section 31.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1987, Act 39, Imd. Eff. June 9, 1987.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

Compiler's note: Section 2 of Act 39 of 1987 provides: "This amendatory act is curative, expressing the original intent of the legislature that the single business tax imposed under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, is an indivisible value added type of tax and not a combination or series of several smaller taxes and that relief from formulary apportionment should be granted only under extraordinary circumstances. This amendatory act clarifies the existing procedures and standards for granting relief under section 69 of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.69 of the Michigan Compiled Laws."

CHAPTER 4

******* 208.71 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.71 Estimated returns and payments.

Sec. 71. (1) A taxpayer that reasonably expects liability for the tax year to exceed \$600.00 or adjustments under section 23 to exceed \$100,000.00 shall file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year.

(2) For taxpayers on a calendar year basis the quarterly returns and estimated payments shall be made by April 30, July 31, October 31, and January 31. Taxpayers not on a calendar year basis shall file quarterly returns and

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make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year.

(3) The estimated payment made with each quarterly return of each tax year shall be for the estimated tax base for the quarter or 25% of the estimated annual liability. The second, third, and fourth estimated payments in each tax year shall include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the tax year to a revised estimate of the annual tax liability.

(4) The interest provided by this act shall not be assessed if any of the following occur:

(a) If the sum of the estimated payments equals at least 85% of the liability or 1% of the gross receipts for the tax year and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made.

(b) If the preceding year's tax liability was \$20,000.00 or less and if the taxpayer submitted 4 equal installments the sum of which equals the previous year's tax liability.

(5) Each estimated return shall be made on a form prescribed by the department and shall include an estimate of the annual tax liability and other information required by the commissioner. This form may be combined with any other tax reporting form prescribed by the department.

(6) With respect to a taxpayer filing an estimated tax return for the taxpayer's first tax year of less than 12 months, the amounts paid with each return shall be proportional to the number of payments made in the first tax year.

(7) Payments made under this section shall be a credit against the payment required with the annual tax return required in section 73.

(8) When the commissioner considers it necessary to insure payment of the tax or to provide a more efficient administration of the tax, the commissioner may require filing of the returns and payment of the tax for other than quarterly or annual periods.

(9) A taxpayer that elects under the internal revenue code to file an annual federal income tax return by March 1 in the year following the taxpayer's tax year and does not make a quarterly estimate or payment, or does not make a quarterly estimate or payment and files a tentative annual return with a tentative payment by January 15, in the year following the taxpayer's tax year and a final return by April 15 in the year following the taxpayer's tax year, shall have the same option in filing the estimated and annual returns required by this act.

(10) Instead of the quarterly return prescribed in subsections (1) and (2) the taxpayer may elect either of the following options:

(a) To file and pay before the sixteenth day of each month an estimated return computed at the rate of 1% of the gross receipts for the preceding month.

(b) To file and pay before the sixteenth day of the months specified in subsection (2) an estimated return computed at the rate of 1% of the gross receipts for the preceding quarter.

(11) A penalty for underpayment of an estimated tax under this act shall not be assessed for the taxpayer's first tax year beginning after December 31, 1999 if the taxpayer claimed a credit under section 35a for the first time on the taxpayer's annual return for that tax year and a penalty would not have applied if the taxpayer had made adjustments under section 23 or 23b on that return.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 41, Imd. Eff. June 28, 1977;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1984, Act 281, Eff. Jan. 1, 1985;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Compiler's note: Section 2 of Act 281 of 1984 provides: "This amendatory act shall take effect for tax years beginning after December 31, 1984."

******* 208.72 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.72 Computation of tax for the first taxable year.

Sec. 72. A taxpayer subject to this act, may elect to compute the tax for the first taxable year if less than 12 months in accordance with 1 of the following methods:

(a) The tax may be computed as if this act were effective on the first day of the taxpayer's annual accounting period and the amount so computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first taxable year, and the denominator of which is 12.

(b) The tax may be computed by determining the tax base in the first taxable year in accordance with an

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accounting method, satisfactory to the commissioner, which reflects the actual tax base attributable to the period.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.73 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.73 Filing annual or final return; form and content; remittance of final liability; exception; extension of time; consolidation of gross receipts of certain entities.

Sec. 73. (1) An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return. A person whose apportioned or allocated gross receipts plus the adjustments provided in section 23b(a), (b), and (c) are less than the following amount for the appropriate year need not file a return or pay the tax provided under this act:

- (a) \$40,000.00 for tax years beginning before January 1, 1991.
- (b) \$60,000.00 for tax years beginning after December 31, 1990 and before January 1, 1992.
- (c) \$100,000.00 for tax years beginning after December 31, 1991 and before January 1, 1994.
- (d) \$137,500.00 for tax years beginning after December 31, 1993 and before January 1, 1995.
- (e) \$250,000.00 for tax years beginning after December 31, 1994.

(2) For a person whose apportioned or allocated gross receipts plus the adjustments provided in section 23b(a), (b), and (c), are for a tax year less than 12 months, the amount in subsection (1) shall be multiplied by a fraction, the numerator of which is the number of months in the tax year and the denominator of which is 12.

(3) The commissioner upon application of the taxpayer and for good cause shown may extend the date for filing the annual return. Interest at the rate of 9% per annum shall be added to the amount of the tax unpaid for the period of the extension. The commissioner shall require a tentative return and payment of an estimated tax.

(4) If a taxpayer is granted an extension of time within which to file the federal income tax return for any taxable year, the filing of a copy of the request for extension together with a tentative return and payment of an estimated tax with the commissioner by the due date provided in subsection (1) shall automatically extend the due date for the filing of a final return under this act for an equivalent period plus 60 days. Interest at the rate of 9% per annum shall be added to the amount of the tax unpaid for the period of the extension.

(5) For tax years that end after July 6, 1994, an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined in the internal revenue code shall consolidate the gross receipts of the members of the affiliated group, member corporations of the controlled group, or entities under common control that have apportioned or allocated gross receipts, plus the adjustments provided in section 23b(a), (b), and (c), of \$100,000.00 or more to determine if the group or entity shall pay a tax or file a return as provided under subsection (1). An individual member of an affiliated group or controlled group of corporations or an entity under common control is not required to file a return or pay the tax under this act if that member or entity has apportioned or allocated gross receipts, plus the adjustments provided in section 23b(a), (b), and (c), of less than \$100,000.00.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1994, Act 246, Eff. July 7, 1994;—Am. 1995, Act 80, Imd. Eff. June 15, 1995.

Compiler's note: MCL 208.39e(8) provides:

"Notwithstanding any other provision of this act and for tax years that begin after December 31, 2002, a person whose apportioned or allocated gross receipts are less than \$350,000.00 for the tax year need not file a return or pay the tax as provided under this act."

******* 208.75 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.75 Furnishing true and correct copy of federal return; filing amended return.

Sec. 75. (1) A taxpayer required to file a return under this act may be required to furnish a true and correct copy of any return or portion of any return which he has filed under the provisions of the internal revenue code.

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(2) A taxpayer shall file an amended return with the department showing any alteration in or modification of his federal income tax return which affects his tax base under this act. The amended return shall be filed within 120 days after the final determination by the internal revenue service.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.76 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.76 Information return; copy of federal return filed by voluntary association, joint venture, partnership, estate, or trust.

Sec. 76. (1) At the request of the department, a person required by the internal revenue code to file or submit an information return of income paid to others shall, to the extent the information is applicable to residents of this state, at the same time file or submit the information in form and content as may be prescribed to the department.

(2) A voluntary association, joint venture, partnership, estate, or trust at the request of the department shall file a copy of any tax return or portion of any tax return which was filed under the provisions of the internal revenue code. The department may prescribe alternate forms of returns.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.77 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.77 Filing of consolidated or combined return by affiliated group of corporations; conditions; "United States corporation" defined.

Sec. 77. (1) The commissioner may require or permit the filing of a consolidated or combined return by an affiliated group of United States corporations if all of the following conditions exist:

(a) All members of the affiliated group are Michigan taxpayers.

(b) Each member of the affiliated group maintains a relationship with 1 or more members of the group which includes intercorporate transactions of a substantial nature other than control, ownership, or financing arrangements, or any combination thereof.

(c) The business activities of each member of the affiliated group are subject to apportionment by a specific apportionment formula contained in this act which specific formula also is applicable to all other members of the affiliated group, and would be so applicable to each member even if it were not a member of the affiliated group.

(2) As used in this section, "United States corporation" means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

******* 208.78 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.78 Consolidated or combined return, tax base, or apportionment factors.

Sec. 78. (1) Except as expressly provided in section 77, a provision of this act shall not be construed to permit or require the filing of a consolidated or combined return or a consolidation or combination of the tax base or apportionment factors of 2 or more United States corporations.

(2) As used in this section, "United States corporation" means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

CHAPTER 5

******* 208.80 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.80 Administration of tax; conflicting provisions; rules; forms; tax cumulative; disposition of proceeds; statistics.

Sec. 80. (1) The tax imposed by this act shall be administered by the revenue commissioner pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.30 of the Michigan Compiled Laws, and this act. In case of conflict between Act No. 122 of the Public Acts of 1941 and this act, the provisions of this act will apply.

(2) Rules shall be promulgated under this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The department shall prescribe forms for use by taxpayers and shall promulgate rules in conformity with this act for the maintenance by taxpayers of records, books, and accounts, and for the computation of the tax, the manner and time of changing or electing accounting methods and of exercising the various options contained in this act, the making of returns, and the ascertainment, assessment, and collection of the tax imposed under this act.

(4) The tax imposed by this act is in addition to all other taxes for which the taxpayer may be liable. The proceeds derived from the tax shall be credited to the general fund of the state to be allocated and distributed as provided by this act.

(5) The department shall prepare and publish statistics from the records kept to administer the tax imposed by this act, detailing the distribution of tax receipts by type of business, legal form of organization, sources of tax base, timing of tax receipts, and types of deductions. The statistics shall not result in the disclosure of information regarding any specific taxpayer.

History: Add. 1985, Act 139, Eff. Mar. 26, 1986.

208.81—208.121 Repealed. 1985, Act 139, Eff. Mar. 26, 1986.

Compiler's note: These sections pertained to determination of tax, failure or refusal to file return or pay tax, penalties, collection of tax, credit or refunds, records, prohibited conduct, disclosures, administration and disposition of tax, and statistics.

CHAPTER 6

******* 208.131 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.131 Definitions.

Sec. 131. As used in this chapter:

(a) "Property taxes" means general ad valorem property taxes levied under Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(b) "Inventory" means, in the case of a person filing the sworn statement of personal property inventories for tax day December 31, 1974, under Act No. 206 of the Public Acts of 1893, as amended:

(i) The stock of goods held for resale in the regular course of trade of a retail or wholesale business.

(ii) Finished goods, goods in process, and raw materials of a manufacturing business.

(iii) Materials and supplies, including repair parts and fuel.

(iv) Inventory does not include personal property under lease or principally intended for lease rather than sale. Inventory does not include property allowed a deduction or allowance for depreciation or depletion under the internal revenue code.

History: 1975, Act 228, Eff. Jan. 1, 1976.

208.132 Repealed. 1996, Act 342, Eff. Oct. 1, 1996.

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Compiler's note: The repealed section pertained to reports relating to state equalized value of inventory.

208.134 Repealed. 1996, Act 342, Eff. Oct. 1, 1996.

Compiler's note: The repealed section pertained to payments to cities, villages, and townships.

******* 208.135 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.135 Payments to counties.

Sec. 135. (1) The department of treasury shall pay to each county by February 1 of each year, following the year the amount was calculated, an amount of money equal to the product of the state equalized value based upon inventory as certified by the department of treasury under section 132 times the county property tax rate for the county as reported to the department of treasury under section 138.

(2) Payments made under this section and the allocation and appropriation of amounts necessary to make the payments under this section shall include interest, which shall accrue on the unpaid balance from February 1, at a rate of interest determined under section 13b of the state revenue sharing act, Act No. 140 of the Public Acts of 1971, being section 141.913b of the Michigan Compiled Laws.

(3) A payment required to be made under this section shall not be delayed so as to cause interest to accrue pursuant to subsection (2) unless the delay in any payment is authorized by a written directive issued and signed by the governor which directive shall conform to and be subject to subsections (2) and (3) of section 13b of the state revenue sharing act.

(4) Amounts required to be paid pursuant to this section that are subject to an unavoidable delay of a de minimis period or that are withheld or set off pursuant to law in the settlement or adjustment of an obligation or debt due to this state shall not be subject to subsections (2) and (3).

(5) The state treasurer may make a disbursement for payment under this section which has been delayed in advance of the date the delayed payment is expected to be paid.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1983, Act 234, Imd. Eff. Dec. 1, 1983.

208.136 Repealed. 1996, Act 342, Eff. Oct. 1, 1996.

Compiler's note: The repealed section pertained to distributions to cities, villages, and townships.

******* 208.136a THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.136a Disposition of revenue.

Sec. 136a. The revenue collected under this act from insurance companies shall not be included in the calculation of payments to cities, villages, townships, and counties under this chapter.

History: Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

208.136b Repealed. 1991, Act 77, Eff. Jan. 1, 1993.

Compiler's note: The repealed section pertained to duties of state treasurer if § 208.23 was not repealed by initiated law.

208.137 Repealed. 1996, Act 342, Eff. Oct. 1, 1996.

Compiler's note: The repealed section pertained to payment of proportionate share of reimbursements to eligible authority.

******* 208.138 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.138 Report of local property taxes to department of treasury; failure to report; report of local

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property taxes and total state equalized value to department of management and budget; report of tax collections available for distribution; warrant.

Sec. 138. (1) Each city, village, township, and county shall report its local property taxes to the department of treasury as required by Act No. 282 of the Public Acts of 1905, as amended, being sections 207.1 to 207.21 of the Michigan Compiled Laws. The local property taxes of eligible authorities levied within that assessing unit shall be reported separately on the form filed by the assessing unit by December 1 of each year. If a city, village, county, township, or eligible authority fails to so report, its local property tax rate shall be entered as zero for the preceding calendar year. The department of treasury shall report to the department of management and budget not later than May 15 each year the local property taxes and the total state equalized value for each city, village, township, and county for the preceding calendar year.

(2) The department of treasury shall report to the department of management and budget the tax collections available for distribution. The department of management and budget may make the distribution in a single warrant.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.139 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.139 Appropriations for payments.

Sec. 139. There is allocated and appropriated each fiscal year an amount sufficient to make the payments under this chapter.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.141 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.141 Senate and house taxation committees to be furnished estimate of quarterly receipts; certification of amount of tax liability.

Sec. 141. The department of treasury and the department of management and budget shall furnish the senate and house taxation committees with an estimate of quarterly receipts under this act on the first day of January, April, July, and October and certify the amount of tax liability under this act within 30 days after the quarterly returns and final returns are due.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.144 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.144 Appropriation for administration of act.

Sec. 144. There is hereby appropriated from the general fund the sum of \$800,000.00 for the 1975-76 fiscal year to the department of treasury for administration of this act.

History: 1975, Act 228, Eff. Jan. 1, 1976.

******* 208.145 THIS SECTION IS REPEALED BY ACT 531 OF 2002 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 *******

208.145 Effective date.

Sec. 145. This act shall take effect January 1, 1976.

History: 1975, Act 228, Eff. Jan. 1, 1976.

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